

# FRESNO COUNTY SUPERIOR COURT

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# FRESNO COUNTY SUPERIOR COURT

## I. ADMINISTRATION RULES

### RULE 1:

#### **RULE 1.1            CITATION OF RULE**

These rules shall be known and cited as the "Local Rules for the Superior Court of California, County of Fresno." (Effective July, 1999)

#### **RULE 1.2            EFFECTIVE DATE OF RULES**

The effective date of these rules is January 1, 1997. (Effective January, 1997)

#### **RULE 1.3            CONSTRUCTION, SCOPE AND EFFECT OF RULES**

A.        These rules shall be construed to secure the efficient administration of the business of the court and to promote and facilitate the administration of justice by the court.

B.        These rules shall govern all proceedings in the court.

C.        These rules are supplementary and subject to, and at all times shall be construed and applied so as to be compatible with California statutes, the California Rules of Court and other rules adopted by the Judicial Council of California. When a specific California Rule of Court or code section designated in these rules is amended or renumbered, the successor Rule of Court or code section shall be applicable. (Effective January, 1999)

#### **RULE 1.4            DEFINITIONS**

The definitions set forth in the California Rules of Court, or any other rules adopted by the Judicial Council, shall apply with equal force and for all purposes to these rules, unless the context or subject matter herein otherwise requires.

**Alternative Dispute Resolution:** "Alternative Dispute Resolution" or "ADR" means a process, other than formal litigation, in which a neutral person or persons resolve a dispute or assist parties in resolving their dispute. Examples include mediation, arbitration, neutral evaluation, and mini-trial.

**Clerk:** The word "Clerk" means the Clerk of the court and any deputy clerks.

**Complex Litigation:** The words "complex litigation" mean cases that meet the definition of "complex case" found in Rule 1800 of the California Rules of Court.

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**Court:** The word "court" means the Superior Court of California, County of Fresno, and includes and applies to any duly appointed or elected judge, to any duly appointed commissioner or referee, to any judge or retired judge who has been assigned by the Chairperson of the Judicial Council to serve, and is serving, as a judge of the court, and to any attorney who is a member of the State Bar of California designated by the Presiding Judge or any other judge as a temporary judge, while the attorney is serving as a judge.

**Court's Website:** The court's website is <http://www.fresno.ca.gov/2810>.

**Day or Days:** The word "day" or "days," unless otherwise specified, shall mean calendar day or days.

**Department:** The word "department" means either a numbered courtroom or an administrative unit of a division.

**Division:** The word "division" means any of the following divisions which comprise the court: Archives Division, Central Division, Clovis Division, Coalinga Division, Firebaugh Division, Fowler Division, Juvenile Division, Kerman Division, Kingsburg Division, Reedley Division, Sanger Division, and Selma Division.

**General Civil Case:** The words "general civil case" mean a limited or unlimited civil case, except probate, guardianship, conservatorship, family law, juvenile proceeding, other civil petition, complex litigation, unlawful detainer, and small claims cases.

**Judgment:** The word "Judgment" includes and applies to any judgment and to any other order or decree from which an appeal lies.

**Judicial Council Rules:** The words "Judicial Council Rules" mean any rules heretofore or hereafter adopted by the Judicial Council of the State of California for superior courts.

**Judicial Officer:** The words "judicial officer" mean any duly appointed or elected judge of the court, any duly appointed commissioner or referee, any judge or retired judge assigned by the Chairperson of the Judicial Council to serve as a judge of the court, and any attorney designated to serve as a temporary judge, while so serving.

**Limited Civil Cases:** The words "limited civil cases," mean limited civil cases as defined in Code of Civil Procedure § 86.

**Meet and Confer:** The words "meet and confer" mean a telephone conference between opposing parties or, whenever reasonably possible, a face-to-face meeting. A meet and confer obligation is not satisfied by an exchange of letters.

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**Paper:** The word "paper" includes all pleadings, notices and other documents.

**Party:** Unless otherwise indicated, "party" means the party litigant, but if the litigant is represented by an attorney, then "party" means the attorney.

**Person:** The word "person" shall include and apply to corporations, partnerships, proprietorships, associations and all other entities, as well as natural persons.

**Plaintiff:** The word "plaintiff" means a plaintiff or petitioner; it also means cross-complainant in those cases where the plaintiff is no longer an active party.

**Presiding Judge:** The words "Presiding Judge" mean the elected Presiding Judge of the court, or the Presiding Judge's designee, unless a case has been filed in, or assigned to, a division other than the Central Division, in which event the words "Presiding Judge" mean the judge of that division.

**Short Cause Case:** The words "short cause case" mean any case in which the time estimated for trial by all parties is five (5) hours or less.

**Unlimited Civil Case:** The words "unlimited civil case" mean a civil action or proceeding other than a limited civil case. (Effective May 14, 2001)

## **RULE 1.5                    AMENDMENT, ADDITION OR REPEAL OF RULES**

Subject to the California Rules of Court, these rules may be amended or repealed, and new rules may be added, by a majority vote of the judges of the court. Written notice of the exact wording of the proposed amendment, addition or repeal shall be given to all of the judges prior to taking a vote. Written notice may be waived by a majority of the judges, if the Presiding Judge declares the proposed amendment, addition, or repeal to be an urgency measure. (Effective January, 1999)

## **RULE 1.6                    FAILURE TO COMPLY WITH RULES**

A. The failure of any party to comply with these rules, unless good cause is shown, or the failure of any party to participate in good faith in any hearing or conference required by these rules, is an unlawful interference with the proceedings of the court and may be punishable by contempt. The court may order the party at fault to pay the opposing party's reasonable expenses and counsel fees, to reimburse or make payment to the county, may order an appropriate change in the calendar status of the case and impose any other sanctions authorized by law. The appearance of a party in pro per does not excuse compliance with these rules.

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B. The fact that the court does not strictly enforce some provision or requirement of these rules on some occasion should not be construed as an indication that the court cannot or will not strictly enforce that provision or requirement on other occasions. (Effective July, 2000)

## **RULE 1.7                    COURT SECURITY**

Security in courtrooms shall be maintained by the Sheriff of the County of Fresno, unless otherwise ordered by the Presiding Judge. (Effective January, 1997)

## **RULE 1.8                    COURT ATTIRE**

No person shall appear in court without a shirt, or barefoot, or wearing a tank top. Bailiffs of the court are to remove any person violating this rule. This rule does not limit any judge from prescribing appropriate attire in the courtroom. (Effective January, 1997)

## **RULE 1.9                    APPEARANCE FOR ANOTHER ATTORNEY**

An attorney who appears for another attorney is representing the party then before the court. As provided by the California Rules of Professional Conduct such attorney is required to do so competently, and is expected to be prepared to carry out and perform any duties required by the court, to have authority to make appropriate dispositions or calendar settings and to communicate any orders the court may issue to the attorney of record. (Effective January, 1997)

## **RULE 1.10                  FILING AND FORMAT OF DOCUMENTS**

All papers shall conform to these rules and the California Rules of Court, and shall be typewritten or legibly printed. The Clerk will not accept for filing any papers not in compliance unless otherwise ordered by the court. (Effective January, 1997)

## **RULE 1.11                  FORMS OF PAYMENT**

A. A personal check, bank cashier's check or draft, money order or traveler's check offered in payment of any fee, fine or bail deposit may be accepted by the Clerk as provided herein.

B. Personal checks shall be drawn on a banking institution located in California. Cashier's checks or money orders may be drawn on an issuing institution located in the United States.

C. The amount shall be the exact amount of the fee, fine or bail; change will not be given. The date on the check must not be over one month previous to the date presented; post-dated checks are not acceptable. The original payee must be the Fresno County Superior Court or other similar designee. Two-party checks

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are not acceptable. The numeric figures must agree with the amount written in words. The sum must be in U.S. currency.

D. Any check or money order which appears irregular on its face may be refused. Personal checks from persons known to have previously tendered dishonored checks may be refused. Checks returned to the court are subject to applicable fees established by the Fresno County Board of Supervisors.

E. Coinage of more than \$50.00 shall be counted and rolled. (Effective July, 2001)

### **RULE 1.12                    CUSTODY OF COURT FILES AND SIGNED ORDERS**

A. No papers, exhibits, or evidence on file with the Clerk in any civil or criminal case shall be taken from the Clerk's office, except by order of the court or in response to a subpoena duces tecum.

B. Orders signed by a judge must be filed immediately in the Clerk's office. An unfiled signed order shall not be taken from the courthouse. (Effective January, 1997)

### **RULE 1.13                    ATTORNEY'S DUTY TO COMPLY WITH CALENDAR**

An attorney shall not accept representation of a client if the attorney does not have sufficient time to adequately prepare before the next scheduled court appearance, and shall comply with all applicable case disposition standards unless otherwise ordered by the court. (Effective January, 1997)

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## **RULE 2: COURT ORGANIZATION**

### **RULE 2.1            ELECTION, TERM AND DUTIES OF PRESIDING JUDGE**

#### **A.        Election and Term**

The Presiding Judge shall be elected and may be removed by a majority of all judges by secret ballot. The election of the Presiding Judge shall take place at a regular meeting held during the month of September of each year in which the term of the prior Presiding Judge expires. Nominations for the position of Presiding Judge shall be made in writing and delivered to the secretary of the Executive Committee no earlier than twenty-one (21) days prior to the meeting and no later than seven (7) days prior to the regular meeting in which the election is to be held. Any Fresno County Superior Court Judge may be nominated by another judge or may nominate himself or herself for the position of Presiding Judge.

The Presiding Judge shall be elected to serve a two-year term commencing the following January 1. The Presiding Judge may be reelected.

#### **B.        Powers and Duties**

The Presiding Judge shall have those powers and duties conferred on the Presiding Judge as provided by statute, California Rules of Court and rules as adopted by the Fresno County Superior Court.

The Presiding Judge's duties shall include, but are not necessarily limited to, the following:

Selecting the court's Assistant Presiding Judge.

Presiding over regular and special court's meetings.

Presiding over Executive Committee meetings.

Setting and implementing policies and procedures.

Planning for the court's future needs.

Supervising the Executive Officer.

Conducting the day-to-day affairs of the court.

Designating an acting Presiding Judge, when the Presiding Judge is unavailable or absent. (Effective April 6, 2002)

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## **RULE 2.2                    ASSISTANT PRESIDING JUDGE**

### **A.        Selection**

The Presiding Judge shall select the Assistant Presiding Judge from among all Fresno County Superior Court Judges.

### **B.        Duties**

The duties of the Assistant Presiding Judge shall be the same as the Presiding Judge in his or her absence at the discretion of the Presiding Judge. Other duties may be delegated to the Assistant Presiding Judge by the Presiding Judge. The Assistant Presiding Judge shall be a member of the Executive Committee. (Effective January, 1999)

## **RULE 2.3                    ACTING PRESIDING JUDGE**

An Acting Presiding Judge may be designated by the Presiding Judge in the Presiding Judge's absence or unavailability. (Effective January, 1999)

## **RULE 2.4                    REGULAR AND SPECIAL MEETINGS**

### **A.        Membership**

All Fresno County Superior Court Judges created under Article VI of the California Constitution shall be voting members.

The Court Executive Officer shall be a non-voting ex officio member and shall serve as secretary at all judge's meetings.

Court Commissioners may attend all judges' meetings unless otherwise informed.

### **B.        Judges' Meetings**

#### **1.        Regular Meetings**

The judges may hold regular meetings at least once every month unless otherwise determined by the Presiding Judge. The meetings shall be held at a reasonably fixed date, time and location. Agendas for all meetings shall be distributed no less than four (4) working days prior to the meeting. Minutes of all meetings shall be distributed as soon as possible.

#### **2.        Semi-Annual Meetings**



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The judges shall hold extended meetings two (2) times each calendar year. One of these meetings shall be scheduled during the month of October. Biennially, at the October meeting, one of the agenda items shall be the election of the Presiding Judge. The Executive Committee shall schedule these semi-annual meetings at a reasonably fixed date and location and provide all judges with at least thirty (30) days written notice thereof. These meetings shall be designated as regular meetings. The purpose of these meetings is to discuss and formulate major policies, strategies and other issues which cannot be discussed adequately at a regular meeting.

### 3. Special Meetings

Special meetings may be called by at least twenty-five percent (25%) of the judges or by the Executive Committee, provided written notice of the date, time and place of the meeting is given to all judges at least seven (7) calendar days prior to the date of the meeting.

#### C. Voting

Each Judge shall have one (1) vote. Any judge who does not attend a regular or special meeting may authorize another Fresno County Superior Court Judge to exercise a written proxy, general or specific as stated in the proxy, and vote on his or her behalf.

#### D. Quorum

A quorum for the conduct of business shall require at least fifty percent (50%) of the total number of voting members (inclusive of general, but not of specific proxies) plus one (1). The proxy must be submitted to the secretary prior to the voting on any issue in which a proxy vote is to be cast. (Effective January, 2002)

### **RULE 2.5                    SELECTION, TERM AND DUTIES OF EXECUTIVE COMMITTEE**

#### A. Composition/Selection of Voting Members

There is hereby established an Executive Committee. The committee shall be comprised of seven (7) judges, one of whom must be the Presiding Judge, and one of whom must be an Assistant Presiding Judge. The remaining judge members shall be elected by all Fresno County Superior Court Judges. The Court Executive Officer shall be a non-voting member and shall serve as secretary of the Executive Committee.

At the October semi-annual meeting and by written notice to each judge, the secretary of the Executive Committee shall notify each judge that nominations for judge members of the Executive Committee are open and shall close twenty-one

## **FRESNO COUNTY SUPERIOR COURT**

days after the date of the written notice. Nominations for Executive Committee judge members shall be made in writing and delivered to the secretary of the Executive Committee. Within three (3) court days after the close of nominations, the secretary shall distribute written ballots to all judges which must be returned to the secretary no later than twenty-one (21) days thereafter. Any judge may be nominated by another judge or by himself or herself for the position of Executive Committee member.

### **B. Executive Committee Membership**

The five (5) judge members shall be elected at large from among all Fresno County Superior Court Judges. Vacancies in any member position, regardless of the reason – elevation, retirement, death, disability, resignation, etc. – shall be filled for the remainder of the term by a majority vote of the remaining members of the Executive Committee, unless just cause to leave the position vacant, such as the limited amount of time left on the departing member's term, is determined by the Executive Committee.

The Executive Committee shall announce the vacancy in writing to all judges. Any judge interested in serving in the vacant position shall have one (1) week to notify the Executive Committee of his or her interest.

### **C. Term of Office for Voting Members**

The term of office for Executive Committee members shall be two (2) years, commencing January 1 of the calendar year following selection.

The terms of the members shall be staggered so that each January 1, no more than four (4) of the seven (7) members change, unless an exception is approved by the Executive Committee.

### **D. Voting**

Each judicial member of the Executive Committee shall have one (1) vote. Any member who does not attend a committee meeting may authorize another judge to exercise a written proxy, general or specific as stated in the proxy, to vote on his or her behalf. No judicial member shall exercise more than two (2) proxies on behalf of other judicial members. The proxy should be provided to the secretary in advance of the meeting. All matters coming before the committee for approval shall require a majority vote of voting members present.

### **E. Quorum**

At least four (4) voting members of the Executive Committee in attendance are necessary to establish a quorum. Submission of a general proxy shall not constitute presence at the meeting for the purpose of a quorum.

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## F. Meetings

The Executive Committee shall hold regular meetings at least once every month. Any Fresno County Superior Court Judge may attend any meeting of the committee. Notice of the time, place and agenda for committee meetings shall be provided to all judges at least twenty-four (24) hours before the meeting and minutes of the meeting shall be promptly prepared and immediately distributed to all judges. Voting on issues shall be limited to agenda items except for items designated as emergency items by a majority of the Executive Committee. Meetings of the Executive Committee shall be chaired by the Presiding Judge.

Any member of the Executive Committee, other than the Presiding Judge, who is absent from three (3) consecutive meetings without good cause as determined by the Executive Committee, or who is excessively absent as determined by the Executive Committee, may be removed as a member by majority vote of the Executive Committee. The remaining members of the Executive Committee shall by majority vote elect a replacement member to serve the remainder of the term of the removed member.

## G. Duties

The duties of the Executive Committee shall include:

1. Recommending court policy and procedures for implementation by the Presiding Judge.
2. Reviewing, in its discretion, the decisions and actions of the Presiding Judge and Executive Officer and, where appropriate, making recommendations to the Presiding Judge.
3. Establishing budgetary priorities and approving budget for submission to the State Trial Court Budget Commission.
4. Recommending for hire an Executive Officer.
5. Conducting an annual evaluation of the performance of the Executive Officer.
6. Selecting and hiring Court Commissioners. (Effective January, 2002)

## **RULE 2.6**      **COMMITTEE ASSIGNMENTS**

All committee members shall be appointed by the Presiding Judge. (Effective January, 1999)

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## **RULE 2.7                    COURT EXECUTIVE OFFICER**

Pursuant to Government Code § 69898, the Court Executive Officer, under the direction of the Presiding Judge, shall exercise all of the powers, duties and responsibilities as Clerk of the Fresno County Superior Court. These powers, duties and responsibilities shall include all of those previously performed by the County Clerk as Ex Officio Clerk of the Fresno County Superior Court, and those pertaining to the Grand Jury prescribed by Penal Code §§ 900 and 933. Pursuant to Government Code § 26800, the County Clerk is hereby relieved of any obligation imposed by law with respect to these powers, duties and responsibilities. Pursuant to Government Code § 69893 and Code of Civil Procedure § 195, the Court Executive Officer shall also serve as Jury Commissioner.

The duties of the Court Executive Officer shall include, but are not necessarily limited to, those set forth in California Rules of Court, Rule 207, and such other duties as may be assigned by the Presiding Judge. The Court Executive Officer shall be responsible for the selection, retention and direction of all non-judicial personnel of the court. The Court Executive Officer shall be an exempt employee whose selection shall be recommended by a majority of the Executive Committee and approved by a majority vote of all Fresno County Superior Court Judges, who may be terminated by a majority vote of all Fresno County Superior Court Judges. The Court Executive Officer shall serve as a non-voting member of the Executive Committee and shall serve as secretary. The secretary is responsible for conducting all elections and counting all votes. (Effective January, 1999)

## **RULE 2.8                    COURT COMMISSIONERS**

Court Commissioners shall be exempt employees who shall serve at the pleasure of the judges of the Fresno County Superior Court. They shall be selected by the Executive Committee and may be terminated by a majority of all Fresno County Superior Court Judges. The court shall conduct at least an annual evaluation of Court Commissioners or additional evaluations as needed. (Effective January, 1999)

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## II. CIVIL RULES

### **RULE 3: ADMINISTRATION OF CIVIL CASES**

#### **RULE 3.1            APPLICABILITY**

The provisions of Rule 3 shall apply to all general civil cases and complex litigation, as defined in Rule 1.4, unless otherwise specified in these rules. (Effective May 14, 2001)

#### **RULE 3.2            CASE DISPOSITION TIME STANDARDS**

A.        The court adopts the case disposition time standards set forth in §§ 2.1 and 2.3 of the California Standards of Judicial Administration.

B.        The court shall endeavor to dispose of all general civil cases as follows: 90% within twelve (12) months after filing, 98% within eighteen (18) months after filing, 100% within twenty-four (24) months after filing. (Effective July, 2000)

#### **RULE 3.3            TRACKING CASES**

All pending cases shall be calendared for a future event. No pending case shall go off calendar without a future event being set. (Effective May 14, 2001)

#### **RULE 3.4            NOTICE OF CASE MANAGEMENT CONFERENCE**

A.        At the time the complaint is filed, the Clerk will issue a Notice of Case Management Conference to plaintiff, designating a date for a Case Management Conference that is no less than 120 days after the filing of the complaint. Plaintiff shall serve a copy of the Notice of Case Management Conference on each defendant along with the summons and complaint.

B.        Any party who files and serves a cross-complaint prior to the Case Management Conference shall serve on each cross-defendant who is a new party to the action a copy of the Notice of Case Management Conference along with the summons and cross-complaint. If a new cross-defendant is served after the initial Case Management Conference, the cross-complainant shall serve the new cross-defendant with notice of any pending Case Management Conference, any assigned trial or settlement conference dates, and any other dates set by the court or orders made at the Case Management Conference.

C.        If plaintiff adds a new defendant or identifies a fictitiously named defendant after the initial Case Management Conference, along with the summons and complaint, plaintiff shall serve the newly named defendant with notice of any

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pending Case Management Conference, any assigned trial and settlement conference dates, and any other dates set by the court or orders made at the Case Management Conference.

D. Proof of service of notice of a Case Management Conference shall be filed with the court and may be included in the proof of service of the summons and complaint or cross-complaint. (Effective May 14, 2001)

### **RULE 3.5                    SERVICE AND FILING OF PROOF OF SERVICE**

A plaintiff shall serve all named defendants with all pleadings and notices required by these rules or other law, including notice of a Case Management Conference, and shall file proof of service with the court, within sixty (60) days from the date the complaint is filed. (Effective July, 2002)

### **RULE 3.6                    EXTENSIONS OF TIME BY THE COURT**

A. The court may extend any time requirement for service of process or for filing proof of service or responsive pleadings upon a showing of good cause on noticed motion or by ex parte application, which may be made on the form available from the Clerk's office and on the court's website. The motion or application must be filed before the expiration of the initial time period within which the act is required to be done. When a request for an extension is filed, the court may deny the request, grant an extension of time to a specified date, or conduct a hearing on the matter.

B. When applying to the court to extend time for service of process based on the conditions stated in Code of Civil Procedure § 583.240, the plaintiff shall set forth the earliest date by which service may reasonably be effected so that the court may set a date for service and for the filing of a proof of service. (Effective May 14, 2001)

### **RULE 3.7                    CASE MANAGEMENT PLANS**

A. All general civil cases and complex litigation shall be assigned to one of the following case management plans:

1. Plan 1: cases to be disposed of within 12 months.
2. Plan 2: cases to be disposed of within 18 months.
3. Plan 3: cases to be disposed of within 24 months.
4. Exempt complex litigation: complex litigation as defined in Rule 1.4 that is not expected to be disposed of within 24 months.

B. Unless designated as a complex case in accordance with the California Rules of Court, all general civil cases shall be deemed to be assigned to

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Plan 1 upon the filing of the complaint. The court may reassign a case to a different plan at the time of a Case Management Conference or on noticed motion showing good cause for the reassignment. (Effective May 14, 2001)

### **RULE 3.8                    AT ISSUE MEMORANDUM**

A. In general civil cases that are at issue before the Case Management Conference, if no jury is demanded and the time estimate for trial is two (2) hours or less, plaintiff may, within 60 days after the filing of the complaint, serve and file an At Issue Memorandum requesting an early trial date as described in Rule 3.10(A). The At Issue Memorandum shall be filed on a form that is available from the Clerk's office and on the court's website. The filed form shall be signed by the party and include a proof of service.

B. Any party not in agreement with the information or estimates given in the At Issue Memorandum may, within 10 days after service of the At Issue Memorandum, serve and file a Counter At Issue Memorandum.

C. Preference shall be deemed waived unless the At Issue Memorandum or Counter At Issue Memorandum states that the case is entitled to preference in setting. (Effective January 1, 2002)

### **RULE 3.9                    CASE MANAGEMENT CONFERENCE**

A. All parties are required to appear at the Case Management Conference. The person attending the conference shall have sufficient understanding of the case and sufficient authority to make decisions and agreements as necessary, including agreements regarding submission of the case to ADR (such as choosing the form of ADR and choosing an arbitrator or mediator), and decisions regarding demanding or waiving a jury trial, assignment of the case to a Plan and the dates to be set for trial and settlement conference.

B. Unless the court determines otherwise, all cases except complex litigation are deemed at issue and ready to be set for trial at the time of the Case Management Conference.

C. At the Case Management Conference, all at issue cases will be assigned a date for trial, mandatory settlement conference, and trial readiness hearing.

D. At the Case Management Conference, the court may:



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1. Reassign the case to Plan 2 or Plan 3;
2. Designate the case as complex litigation, refer it to the Presiding Judge for assignment of a judge for all purposes, and set it for a further Case Management Conference before the assigned judge;
3. Order or refer the case to ADR;
4. Direct one or more parties to effect service of process, file specified motions, or take other specified actions within specified time periods;
5. Record each party's demand or waiver of jury trial.
6. Schedule a further Case Management Conference;
7. Make a scheduling order, which may include a completion date for discovery and a final date for motions;
8. Schedule the matter for a dismissal hearing or issue an order to show cause.
9. Impose sanctions, including dismissal of the case.
10. Make such other orders as the court deems appropriate.

E. A Case Management Conference will be taken off calendar only if the case has been disposed of or has received a trial date prior to the Conference. For purposes of this rule, a case is disposed of if a judgment or dismissal of the entire action has been filed. If the case has been stayed or a notice of conditional settlement has been filed, the Conference will be continued. If any of these conditions has been met, it is the responsibility of the parties to notify the TCDR Clerk in writing and ask that the Conference be taken off calendar or continued.  
(Effective May 14, 2001)

### **RULE 3.10      TRIAL DATE AND CONFLICTS**

A. Ordinarily, Plan 1 cases will be assigned a trial date that is approximately 330 days after the date the complaint was filed.

1. At the request of all parties or at the request of any party without objection from any other party, a Plan 1 case may be set for trial on the earliest available court date. The request may be made in the At Issue Memorandum pursuant to Rule 3.8, or by stipulation. If the request is made in the At Issue Memorandum, it will be deemed unopposed if no Counter At

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Issue Memorandum is timely filed challenging the request. If an objection is made, the court will determine at the Case Management Conference whether the case should be set for trial on the earliest available court date.

2. Limited civil cases in which an early trial date is not requested as described in subdivision (1) will ordinarily be assigned a trial date that is approximately 90 days after the initial Case Management Conference date.

B. Plan 2 cases will be assigned a trial date that is approximately 480 days after the date the complaint was filed.

C. Plan 3 cases will be assigned a trial date that is approximately 630 days after the date the complaint was filed.

D. No trial date may be continued merely on stipulation of the parties. On a showing of good cause, the trial date may be continued by court order, obtained by noticed motion or by ex parte application presented to the Presiding Judge, or his or her designee, at least five (5) court days before trial. It may also be continued pursuant to (F) below.

E. If an application for a continuance is presented less than five (5) court days before the trial date, it shall contain a detailed factual declaration demonstrating good cause for the delay.

F. After a trial date has been assigned, any party who has a conflict with the trial date shall, immediately upon having knowledge of the conflict, submit a letter to the Presiding Judge and to all other parties notifying them of the conflict. The court shall maintain the trial date until the trial readiness hearing unless: (1) a continuance has been granted pursuant to (D) above, or (2) a continuance is approved by the Presiding Judge at the conclusion of the settlement conference.  
(Effective January, 2002)

### **RULE 3.11            COMPLEX LITIGATION**

A. Cases designated as complex litigation shall be exempt from the case disposition time standards of Rule 3.2. When a case is designated as complex litigation, the case shall be referred to the Presiding Judge or his designee, who may assign the case to one judge for all purposes or make other orders as appropriate.

B. If the case is assigned to one judge for all purposes, any pending or future Case Management Conference will be heard before the assigned judge. At or after the Case Management Conference, the assigned judge may issue a scheduling order and assign a trial date designed to ensure that the case will progress to a disposition in a timely fashion, consistent with the purposes of the Trial Court Delay Reduction Act and with the particular needs of the case. After assignment, the

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assigned judge shall hear all of the proceedings in the case, except the mandatory settlement conference and except as otherwise ordered by the Presiding Judge. The assigned judge shall monitor the case to its conclusion, with the goal that it be disposed of within three (3) years after filing.

C. If the case is not assigned to one judge for all purposes, the case will be set for a further Case Management Conference before the Case Management Conference judge or another designated judge. (Effective May 14, 2001)

### **RULE 3.12            CONTINUANCE OR MODIFICATION**

No time standard or deadline specified in these rules, nor any schedule, date, time limitation or other requirement imposed by any order made pursuant to these rules may be modified, extended or voided by any stipulation or agreement of the parties unless a written order approving it is obtained from the court. Continuances, extensions or modifications may be obtained by noticed motion or ex parte application, on a showing of good cause. (Effective May 14, 2001)

### **RULE 3.13            SETTLEMENT AND CONDITIONAL SETTLEMENT**

A. When a case settles, whether by conditional settlement or otherwise, the plaintiff shall comply with Rule 225 of the California Rules of Court. Written notice of settlement shall be given on the Notice of Settlement form, which is available from the Clerk's office and on the court's website.

B. When a settled case has not been dismissed within 45 days of the notice of settlement or within 45 days of the dismissal date specified in the notice, if the settlement is conditional, the court will set the matter for a Rule 225 hearing. An unexcused failure of plaintiff to appear at the hearing may result in the court's dismissal of the case.

C. An extension of time for filing the dismissal may be granted on a showing of good cause. Requests for extensions shall be made on the Request for Extension of Time to File Dismissal form, which is available from the Clerk's office and on the court's website. (Effective July, 2002)

### **RULE 3.14            DEFAULT JUDGMENT**

To obtain a default judgment a plaintiff shall present testimony in support of his or her claim by competent witnesses having personal knowledge of the essential facts or file an affidavit or declaration by such witnesses, except for cases governed by § 585(a) of the Code of Civil Procedure. The plaintiff's attorney may testify based upon information and belief. (Effective July, 2000)

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## **RULE 3.15            SIGNATURES ON ORDERS**

It is the policy of the court not to sign orders or judgments unless some portion of the text of the order or judgment appears on the page to which the judicial officer's signature is affixed, so that the connection between the signature page and the remainder of the order or judgment is apparent. (Effective July, 2000)

## **RULE 3.16            DESIGNATION OF COUNSEL**

When a law firm is the attorney of record in a civil action, the attorney who signed the initial pleading shall be designated to receive notices in the case. If, after the filing of the initial pleading, the attorney who is to receive notices changes, then a Designation of Counsel must be filed with the court. The designation must include the name and state bar number of the designated attorney. The designation may be made on a form available from the Clerk's office and on the Court's website. (Effective May 14, 2001)

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# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 4: CIVIL LAW AND MOTION**

### **RULE 4.1            SETTING LAW AND MOTION HEARING**

Prior to the filing of any law and motion matter, a date and time for hearing shall be reserved with the Clerk. Matters will be set for hearing by the Clerk upon receipt of a duly served notice of motion and supporting documents, with the hearing scheduled in accordance with the date and time reserved. (Effective January, 1997)

### **RULE 4.2            TAKING LAW AND MOTION HEARING OFF CALENDAR**

A. Any party who reserves a date and time for hearing with the Clerk, but fails to timely file moving papers for a hearing on that date, shall promptly notify the Clerk and request that the hearing be taken off calendar.

B. Unless otherwise ordered by the court, any moving party who wishes to have a law and motion matter taken off calendar after the moving papers have been filed but before a response has been filed, may be required to give written notice to the Clerk, the assigned judge, and all parties at least five (5) court days before the scheduled hearing date. Notice to the Clerk may be sent by facsimile and shall be accompanied by proof that notification was given to all parties. Proof of notification to all parties may be made:

1. By proof of service by mail, or
2. By letter indicating that a copy thereof has been sent by facsimile to all parties, or
3. By a declaration stating when, and in what manner, notice was given to all parties.

C. A law and motion matter may also be taken off calendar by stipulation of the parties at least five (5) court days before the scheduled hearing, with written notice to the Clerk and assigned judge. Notice to the Clerk and assigned judge may be given by facsimile.

D. Any moving party who wishes to have a law and motion matter taken off calendar after the responsive papers have been filed shall do so by stipulation of the parties or shall obtain the permission of the assigned judge and give written notice to all parties. Proof of notification to all parties shall be made as described in (B) above.

E. Within five (5) court days of the hearing, permission to take the matter off calendar shall be obtained only from the assigned judge. (Effective January, 2003)

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## **RULE 4.3                    CONTINUING A LAW AND MOTION HEARING**

A. Any request for continuance of a law and motion hearing, may be required to be made in writing to the assigned judge at least five (5) court days before the scheduled hearing with proof of notification to all parties as described in Rule 4.2. The request may be submitted by facsimile. The request for continuance shall include a specific date for the continued hearing and a statement indicating whether the other parties consent or object to the continuance and/or the requested new hearing date.

B. If the request is made after the five (5) court day time limit has passed, the request shall contain a detailed factual explanation demonstrating good cause for the delay. (Effective January, 2003)

## **RULE 4.4                    ADDITIONAL COPIES**

In cases other than limited civil cases, the court requests that any papers filed with the Clerk in connection with a law and motion matter be accompanied by one full set of copies of the original (including exhibits). (Effective July, 2000)

## **RULE 4.5                    TELEPHONIC APPEARANCES**

Any party may appear telephonically with prior approval of the assigned court. "Court Call" [(888) 882-6878], a private vendor, is available in some, but not all, departments. Whether or not to use "Court Call," and whether or not a conference call is necessary, shall be determined at the time of pre-approval. (Effective July, 2000)

## **RULE 4.6                    TENTATIVE RULINGS**

The court follows the tentative ruling procedure set forth in Rule 324(a)(1) of the California Rules of Court. A tentative ruling on a civil law and motion matter may be obtained by:

1. Telephoning the court at (559) 221-4583 or (800) 563-6930; or
2. Accessing tentative rulings on the court's website. (Effective May 14, 2001)

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## **RULE 5: EARLY MANDATORY MEDIATION PILOT PROGRAM**

### **RULE 5.1            APPLICATION**

Fresno County has been selected to participate in a Mandatory Mediation Pilot Program authorized by Code of Civil Procedure § 1730 et seq. and California Rules of Court, Rule 1640 et seq. This rule applies to those cases selected by the court for inclusion in this pilot program. (Effective July, 2000)

### **RULE 5.2            EARLY MEDIATION STATUS CONFERENCE**

A.        The court may notify parties by court order that their case has been selected for inclusion in the Mandatory Mediation Pilot Program. The court may order the parties to appear at an Early Mediation Status Conference.

B.        All parties ordered to attend an Early Mediation Status Conference (EMSC) shall serve and file an EMSC Statement no later than five (5) calendar days before the conference date. The EMSC Statement must be on a form approved by this court.

C.        The court may vacate or continue the EMSC date and excuse the parties from filing an EMSC Statement if a Stipulation to Participate in Mediation is filed by the parties within the deadline specified in the court order. The Stipulation must be on a form approved by this court.

D.        A case that has been selected for inclusion in the Mandatory Mediation Pilot Program is exempt from the requirement of filing an at issue memorandum. (Effective July, 2000)

### **RULE 5.3            MEDIATORS**

A.        The court will maintain a roster of court-approved mediators referred to as Panel Mediators. All mediators will be required to attend an orientation session before they are accepted on the Panel. Attorney mediators will be required to show evidence of at least twenty-five (25) hours of mediator training prior to the conclusion of their twelfth month on the Panel. Non-attorney mediators will be required to show evidence of at least twenty-five (25) hours of mediator training prior to being placed on the Panel. The ADR Administrator shall have the discretion to modify these requirements for good cause on a case by case basis. Any request for modification which is denied by the ADR Administrator may be appealed to the ADR Oversight Committee, whose decision shall be final.

B.        All Panel Mediators must:



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1. Agree to abide by the court's reimbursement policy and procedure;
2. Agree to conform to the court's Standards of Professional Conduct for Mediators;
3. Comply with the court's rules and procedures for implementing the Mandatory Mediation Pilot Program, as determined by the ADR Oversight Committee and ADR Administrator.

C. Non-Panel Mediators may be utilized, however:

1. If the parties choose to use a non-panel mediator, the parties shall be responsible for the mediator's compensation.
2. Non-panel mediators may request compensation from the court.
3. The court will consider each request on a case by case basis.
4. In no case will the compensation be greater than what the court would pay a panel mediator.
5. Request for court compensation shall be accompanied by a completed ADR Form 100.

D. Non-Panel Mediators who are not approved for compensation by the ADR Administrator may appeal that decision to the ADR Oversight Committee, whose decision shall be final. (Effective July, 2000)

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**RULE 6: (RESERVED)**

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## **RULE 7: ALTERNATIVE DISPUTE RESOLUTION (ADR)**

### **RULE 7.1            ADR INFORMATION**

Attorneys shall provide their clients with a copy of the ADR information package at the earliest available opportunity. Upon request, the ADR information package may be obtained from the Clerk. Plaintiffs and cross-complainants shall serve a copy of the ADR information package on each defendant or cross-defendant as required by the California Rules of Court. (Effective May 14, 2001)

### **RULE 7.2            JUDICIAL ARBITRATION**

The provisions of Chapter 2.5, commencing with § 1131.10 of the Code of Civil Procedure and the provisions of California Rules of Court set forth in Division III, commencing with Rule 1600, regarding judicial arbitration shall apply to all civil cases as stated therein. It is determined to be in the interest of justice that any at-issue limited civil case pending on or filed after September 1, 1997, may be ordered by the court to arbitration, except as otherwise provided by law. (Effective May 14, 2001)

### **RULE 7.3            MEDIATION**

The Presiding Judge has elected to apply the provisions of Code of Civil Procedure section 1775, et seq., to eligible cases. Cases eligible for judicial arbitration may be subject to court-ordered mediation. (Effective May 14, 2001)

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## **RULE 8: MANDATORY SETTLEMENT CONFERENCE**

### **RULE 8.1                    MANDATORY SETTLEMENT CONFERENCE**

A mandatory settlement conference shall be held pursuant to Rule 8 for every civil case set for trial on the master calendar, except as follows:

A.      Small claims, unlawful detainers, and family law cases. (For Family Law Department requirements, refer to Rule 36.)

B.      Short cause cases.

C.      In any case where, at least thirty (30) days prior to the date set for trial, all parties have filed a written stipulation that they have previously engaged in one court-supervised settlement conference and do not believe another settlement conference would be productive. Plaintiff shall notify the calendar Clerk of the filing of the stipulation.

D.      In any case where, at least thirty (30) days prior to the date set for trial, all parties have filed a written stipulation that they have engaged in mediation, conducted by a neutral mediator, and do not believe a settlement conference would be productive. Plaintiff shall notify the calendar Clerk of the filing of the stipulation.

E.      By order of the court for good cause, based upon a petition addressed to the Presiding Judge citing this rule, filed and served on all other parties at least thirty (30) days prior to trial. Opposition to the petition shall be in writing, addressed to the Presiding Judge, filed and served on all parties no later than ten (10) days after service of the petition. There will be no oral argument on such petitions. Parties will be notified of the court's ruling. Good cause requires facts supporting the conclusion that it would be extremely unlikely that a settlement conference will resolve the case. (Effective January, 1997)

### **RULE 8.2                    MEET AND CONFER PRIOR TO SETTLEMENT CONFERENCE**

A.      In all cases set for a settlement conference where the parties are not excused from attending the settlement conference, the parties shall meet and confer prior to the date set for the settlement conference in a good faith attempt to settle all issues. The requirement of this rule is met by a face-to-face meeting between the parties, or by engaging in mediation before a neutral mediator. If, however, an attorney's office is located outside of Fresno County, or a party in pro per resides outside of Fresno County, that party may meet the requirement of this rule by meeting and conferring telephonically in a good faith attempt to settle all issues. Communication by writing will not suffice.

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B. The fact of compliance with this rule, and the results of the meet and confer conference shall be set forth in the settlement conference statement. (Effective January, 1998)

### **RULE 8.3                    FURTHER SETTLEMENT CONFERENCE ON DAY OF TRIAL**

Notwithstanding Rule 8.1, the Presiding Judge may order any case to a further settlement conference on the day the case is set for trial. (Effective January, 1997)

### **RULE 8.4                    CONFLICTS IN SCHEDULING AND SPECIAL REQUESTS**

A. Any party who wishes to request a change in a settlement conference date due to a scheduling conflict, or who wishes to make any other special request regarding a settlement conference, shall present that request to the Presiding Judge by letter, with a copy mailed to each party, at least thirty (30) days prior to the date set for the settlement conference. Any party wishing to respond to the request shall respond by letter to the Presiding Judge, with a copy mailed to each party, within two (2) days of receipt of the request letter.

B. If the request is made after the thirty-day limit has passed, the request shall include a detailed factual declaration demonstrating good cause for the delay.

C. The party making the request may submit a stipulation or other paper reflecting the consent of all other parties to the proposed change. The court will generally not grant a request for a change of date for the settlement conference unless all parties have been contacted by the requesting party and have agreed to a new date and time.

D. Parties will be notified of the court's ruling.

E. On the request of an attorney whose office is located outside the County of Fresno, the court will attempt, if possible, to reschedule a settlement conference at a different time, but on the same date, when such request is made pursuant to subparagraph A above. (Effective January, 1997)

### **RULE 8.5                    ATTENDANCE**

A. **Parties**. All parties shall be personally present at the settlement conference except that an insured party is not required to appear where that party's insurance carrier admits coverage for all causes of action alleged against that party, full authority has been granted by such insured party to the carrier and attorney to settle within policy limits, and the highest demand for settlement is within policy limits. However, where the carrier assumes the defense pursuant to a reservation of rights, the insured shall attend the settlement conference also.

A party who is not an individual shall appear by a representative who shall be fully familiar with the facts of the case and have full authority to settle. If the party's

## FRESNO COUNTY SUPERIOR COURT

governing body is a board, council, or committee which is required to approve settlement, the representative attending the settlement conference on behalf of that party shall have authority to recommend approval directly to such governing body, without seeking approval from any other person prior to making such recommendation.

B. **Attorneys.** The trial attorney for the case shall be personally present. The only exception shall be where the trial attorney is engaged in another trial at the same time as the settlement conference, in which case another attorney from the trial attorney's office shall attend, who is fully familiar with the facts of the case and has full authority to settle and who has discussed the case thoroughly with the client prior to the settlement conference.

C. **Insurance Claims' Employee.** In any case which requires consent of an insurance carrier to settle, an employee of the insurance carrier, who is fully familiar with the case and who has full authority to settle, shall be personally present. A claims adjuster retained only for the purpose of attending the settlement conference will not be acceptable. If the insurance carrier has no claims office located in California, and the court has been so notified pursuant to these rules, the personal attendance of an employee of the carrier is not required; provided, however, an employee of the insurance carrier with full authority to settle shall be immediately available by telephone until released by the court, regardless of the time zone.

D. **Consent of Others.** Where the consent of a spouse, business partner or other person is necessary to achieve settlement, even though this person is not a named party, every reasonable effort shall be made to either secure the attendance of such person at the settlement conference or have that person immediately available by telephone until released by the court.

E. **Structured Settlements for Minors.** In any case involving possible settlement for the benefit of a minor, where the settlement value might reasonably exceed \$25,000.00, the defendant seeking settlement with the minor shall bring to the settlement conference, or, throughout the settlement conference shall have immediate access to, a person qualified to compute present values under a structured settlement.

F. **Excused Attendance.** Subject to the above the court will not excuse parties, attorneys, or insurance carrier employees from required attendance except for reasons of medical disability. (Effective January, 1998)

### **RULE 8.6                    SETTLEMENT CONFERENCE STATEMENT**

A. Each party shall mail to the Presiding Judge and serve on all parties a settlement conference statement, in pleading or letter form, preferably at least ten (10) days prior to the settlement conference, but in no event later than five (5) court



## **FRESNO COUNTY SUPERIOR COURT**

days prior to the settlement conference. Settlement conference statements will not be filed or kept in the court file, and must be submitted anew for each additional settlement conference.

B. In addition to the subject matter required by Rule 222(d) of the California Rules of Court, the settlement conference statement shall contain:

1. The names of parties and their attorneys.
2. Whether or not an insurance carrier employee is required to be personally present, and, if so, the identity of the carrier.
3. Whether or not a board, council or other committee must approve of settlement, and, if so, the identity of that body.
4. Whether or not the consent of a person who is not a named party is necessary to achieve settlement, and, if so, the identity of that person.
5. The fact and results of compliance with Rule 8.2 and the results of prior mediation or arbitration.
6. Prior settlement negotiations.
7. Code of Civil Procedure § 998 demands.
8. Whether or not further discovery is contemplated, and, if so, a description of it. (Effective July, 1999)

### **RULE 8.7                    FURTHER SETTLEMENT CONFERENCES BEFORE TRIAL**

To ensure a meaningful settlement conference prior to trial, the court may set the matter for further settlement conferences prior to the date set for trial, or, with the consent of the Presiding Judge, may remove the case from the trial calendar and order the parties to obtain a new settlement conference and trial date. (Effective January, 1997)

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## **RULE 9: TRIAL READINESS**

### **RULE 9.1            MEET AND CONFER**

In all civil cases, except short cause cases, the attorneys for the parties shall meet and confer at least five (5) days prior to the date set for trial in order to accomplish the following:

A. All in limine motions and motions for judgment on the pleadings shall be in writing and exchanged by the parties. The trial court will not hear oral in limine motions or those not exchanged except for good cause shown.

B. If a jury has been requested, the parties shall prepare and exchange proposed jury instructions and shall prepare a jointly signed neutral statement of the case.

C. If a jury has not been requested, the parties shall prepare and exchange trial briefs. The trial court will not accept trial briefs not exchanged except for good cause shown.

D. The parties shall identify and list the proposed exhibits, and exchange such lists.

E. The foregoing papers shall be submitted to the trial judge on the first day of the trial. (Effective January, 1998)

### **RULE 9.2            TRIAL READINESS HEARING**

Except for short cause cases, the Presiding Judge shall set and conduct a trial readiness hearing on the Friday prior to the date set for trial. The provisions of Rule 20.7 shall apply. (Effective July, 2000)

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# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 10: EX PARTE APPLICATIONS**

A. All applications for ex parte orders failing to comply with Rule 379 of the California Rules of Court will be rejected. Parties making ex parte applications shall obtain a date and time for the hearing of the application from the Clerk (Civil Calendar Division).

B. The court requests that the party seeking an ex parte order submit the application and all supporting papers and fees to the Clerk for filing not later than 2:00 p.m. on the day preceding the hearing, if the hearing is set in the morning, and not later than 9:00 a.m. on the date of the hearing, if the hearing is set in the afternoon. (Effective July, 2000)

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# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 11: MISCELLANEOUS CIVIL RULES**

### **RULE 11.1            CIVIL JURY FEES**

A. Trial by jury shall be deemed waived unless jury fees are deposited no later than twenty-five (25) days prior to the trial in any case not entitled to priority setting, or deposited five (5) days prior to trial in any unlawful detainer case or other case entitled to priority setting.

B. Should any party demanding jury trial fail to deposit required fees, the Clerk will notify all other parties who have not previously waived trial by jury. Any such party may preserve its right to trial by jury by depositing the required fees within five (5) court days of mailing of the Clerk's notice.

C. Failure by any party to deposit jury fees as required herein shall constitute waiver of trial by jury. (Effective January, 1997)

### **RULE 11.2            USE OF INTERPRETERS**

Interpreters will not be provided for civil or small claims matters, unless otherwise ordered by the court. Upon request, the Clerk will provide the names of authorized interpreters with whom a party may make arrangements for interpreting services, or may refer the party to the court's interpreter coordinator. Any party requiring the services of an interpreter is responsible for arranging and paying for the services of such interpreter unless otherwise ordered by the court. (Effective January, 1997)

### **RULE 11.3            ATTORNEY'S FEES**

A. Attorney's fees in default cases, when allowable in designated cases, shall be fixed in accordance with Appendix A2, except as otherwise ordered by the court.

B. When an attorney is appointed to represent a party in designated cases, the attorneys' fees are governed by the Fresno County Courts Appointed Counsel/Expert General Claim Processing Practices (FCCAC/EGCPP), a copy of which is available from the Clerk. (Effective January, 1999)

### **RULE 11.4            COMPROMISE OF CLAIMS OF MINORS OR INCOMPETENT PERSONS**

A. If the court orders the sum to be received by a minor or incompetent person to be deposited in a bank, trust company, or savings and loan association, the order to deposit money shall be made in conformity with a standard form maintained by the Clerk and direct that: "A certified or file endorsed copy of this

## FRESNO COUNTY SUPERIOR COURT

order shall be delivered to the manager of such bank (trust company or savings and loan association), together with the sum to be deposited therein, and a written receipt of such bank (trust company or savings and loan association) acknowledging receipt of such sum shall forthwith be filed with the Clerk."

B. In cases involving minors, the order shall contain the date when the minor will attain the age of eighteen (18) years and a directive to the bank, trust company or savings and loan association to release on such date all funds to the minor without further order from the court.

C. A petition to withdraw from deposit, and order for withdrawal of funds, pursuant to the Probate Code shall be submitted on a form available in the Clerk's office or a duplicate thereof, and:

1. The certificate of deposit must have been completed and filed prior to filing of the petition for withdrawal.

2. In the event the petition to withdraw funds is based upon the denial of a public agency providing public assistance to provide funds because of the existence of the account, a copy of the written notice from the agency concerned, so stating, shall be attached to the petition.

3. Within fifteen (15) days from the date of the order, a declaration of expenditures made with the funds shall be filed with the Clerk.

D. Subject to Business and Professions Code § 6146, the following attorneys' fees shall be awarded under normal circumstances in cases under this rule:

1. Settlement prior to case being assigned to a department for trial: 25% after reasonable costs are first deducted.

2. Settlement during trial after a substantial part of plaintiff's case has been introduced or after judgment: 33 1/3% after reasonable costs are first deducted.

3. Settlement or judgment at times between subsections 1 and 2 above: not less or more than the fees prescribed in subdivisions 1 and 2.

4. Settlement after the filing of the respondent's brief on appeal: 40% after reasonable costs are first deducted.

Reasonable costs incurred or paid by an attorney shall be itemized and accompanied by appropriate vouchers or other supporting evidence.

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In computing fees, parents claiming reimbursement for medical and other expenses shall pay their proportionate share of the attorneys' fees, except in cases of hardship. (Effective July, 2002)

### **RULE 11.5            COURT REPORTER FEES**

A.        In any civil case in which a trial or hearing is expected to last more than one (1) hour, but not more than four (4) hours, and official reporting services (by court reporter or electronic recording) are required, the parties shall deposit with the Clerk their pro rata shares of the fee for one-half (1/2) day of official reporting services.

B.        In any civil case in which a trial or hearing is expected to last more than four (4) hours and official reporting services are required, the parties shall deposit with the Clerk their pro rata shares of the fee for one (1) full day of official reporting services.

C.        The fee shall be deposited at the beginning of the trial or hearing. The fee for any subsequent day of the trial or hearing shall be deposited with the Clerk at the beginning of each subsequent day.

D.        The receipt issued by the Clerk for payment of the above fees shall be shown to the judge's Clerk at the beginning of the proceeding, or the trial or hearing will not proceed. (Effective July, 2000)



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# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 12: UNLAWFUL DETAINER CASES**

### **RULE 12.1            CASE DISPOSITION TIME**

The court shall endeavor to dispose of all unlawful detainer cases as follows: 90% within thirty (30) days after filing; and 100% within forty-five (45) days after filing. (Effective July, 2000)

### **RULE 12.2            NOTICE OF DISMISSAL HEARING**

At the time the complaint is filed, the Clerk will issue a Notice of Dismissal Hearing to plaintiff, designating a date for a Dismissal Hearing that is within 45 days after the filing of the complaint. (Effective May 14, 2001)

### **RULE 12.3            SERVICE AND FILING OF PROOF OF SERVICE**

Within fifteen (15) days from the date the unlawful detainer complaint was filed, plaintiff shall serve all named defendants and file proof of service with the court or shall file an application for a posting order, unless a responsive pleading has been filed. (Effective May 14, 2001)

### **RULE 12.4            AT ISSUE MEMORANDUM**

Within twenty-five (25) days after the date the unlawful detainer complaint was filed, plaintiff shall file an At Issue Memorandum, unless there has been a final disposition of the case or a notice of settlement or stay has been filed. The At Issue Memorandum shall be submitted on a form which is available from the Clerk's office or on the court's website. By filing an At Issue Memorandum a party represents that the case is at issue and will be ready to proceed to trial on the date assigned. (Effective May 14, 2001)

### **RULE 12.5            DISMISSAL HEARING**

A. Plaintiff shall attend the Dismissal Hearing, either in person or by telephonic appearance. At the hearing, the status of the case will be discussed, including whether the case should be set for trial or dismissed. Appropriate orders will be made.

B. Failure of the plaintiff to appear may result in dismissal of the case.

C. A dismissal hearing will be taken off calendar if a trial date has been set, an At Issue Memorandum has been filed, or there has been a final disposition of the case. A dismissal hearing will be continued if a notice of settlement or stay has

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been filed with the court prior to the date of the dismissal hearing. If any of these conditions exists, it is the responsibility of the parties to notify the TCDR Clerk in writing and ask that the Conference be taken off calendar or continued. (Effective May 14, 2001)

### **RULE 12.6            ASSIGNMENT OF CASE FOR TRIAL**

If the At Issue Memorandum complies with these rules in all respects, the Clerk shall assign the case for trial within twenty (20) days after the date the At Issue Memorandum was filed, and mail notice of the trial date to the parties at least ten (10) days before the trial date. (Effective May 14, 2001)

### **RULE 12.7            HEARING TO PROVE DAMAGES**

A. After a Clerk's judgment for restitution of the premises has been entered, a plaintiff seeking to recover money damages shall set the case for a hearing to prove damages within six (6) months after the judgment is entered.

B. A personal appearance will not be required if a declaration is submitted pursuant to § 585(b) and (d) of the Code of Civil Procedure. (Effective July, 2000)

### **RULE 12.8            UNDERTAKING FOR IMMEDIATE POSSESSION OF PREMISES**

Unless otherwise ordered by the court, the minimum amount of undertaking required for an order for immediate possession of premises, pursuant to § 1166a of the Code of Civil Procedure, shall be 10 times the amount of monthly rental, but not less than \$500.00. (Effective July, 2000)

### **RULE 12.9            JUDGMENT**

When a judgment for restitution or possession of the premises under Code of Civil Procedure section 1169 or 1174 is prepared and submitted by plaintiff, it shall describe with reasonable certainty the real property that is the subject of the judgment, giving its street address (including the zip code), if any, or other common designation, if any. (Effective January, 2003)

# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 13: SMALL CLAIMS CASES**

### **RULE 13.1      CASE DISPOSITION TIME**

The court shall endeavor to dispose of all small claims cases as follows: 90% within seventy (70) days after filing; and, 100% within ninety (90) days after filing. (Effective July, 2000)

### **RULE 13.2      UNSERVED DEFENDANTS**

A. If proof of service on the defendant in a small claims case has not been filed by the date set for trial, the case will not be heard on that date. The court or the Clerk may reset the case for trial.

B. If more than one defendant is named in the plaintiff's claim, and proof of service as to some, but not all, of the defendants has been filed prior to the date set for trial, the court may continue the trial of the case as provided in § 116.570 of the Code of Civil Procedure, or trial may proceed only as to those defendants who have been served. The court or the Clerk may reset the case for trial as to any remaining defendants. (Effective July, 2000)

### **RULE 13.3      UNTIMELY SMALL CLAIMS APPEALS**

No notice of appeal from a small claims judgment shall be accepted for filing after the statutory period for filing such an appeal has expired, unless a writ of mandate ordering the Clerk to file the notice of appeal has been issued. (Effective July, 2001)

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## III. CRIMINAL RULES

### RULE 14: GENERAL CRIMINAL RULES

#### **RULE 14.1            REQUEST FOR WARRANTS**

During non-court hours all requests for search or arrest warrants in all cases shall be submitted to the designated duty judge. (Effective July, 2000)

#### **RULE 14.2            RELEASE ON OWN RECOGNIZANCE**

Motions regarding release on own recognizance or for bail modification prior to the first court appearance should be made, in all cases, before the arraignment department judge or commissioner during normal court hours. After the first court appearance, such motions shall be made in the arraignment department or the department assigned to hear such motions, in open court. (Effective July, 2000)

#### **RULE 14.3            MOTIONS MADE FOR RELEASE ON OWN RECOGNIZANCE OR BAIL MODIFICATION**

A. When a motion for release on own recognizance or bail modification has been made to the court, and granted in whole or in part, or granted conditionally or with limiting terms, and a subsequent motion is made by the same party in the same case for a similar order upon materially changed circumstances, the subsequent motion shall be accompanied by a disclosure that:

1. A prior motion has been made,
2. When and to what judge it was made,
3. What the nature of the motion was,
4. What order or decision was made thereon, and
5. What materially changed circumstances are claimed to be shown.

B. Any order made on subsequent applications failing to comply with these requirements may be vacated or set aside on exparte application or on the court's own motion at any time. (Effective July, 2000)

# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 14.4            DEFENDANT'S CLOTHING**

The attorney representing a defendant in the custody of the Sheriff in a criminal matter shall make timely and appropriate arrangements to ensure that the defendant is suitably dressed for trial before the case is assigned to a trial department. (Effective July, 2000)

## **RULE 14.5            CRIMINAL TRIAL CONFIRMATIONS**

A. All felony trial confirmations will be set in the designated department on Thursdays. The initial trial confirmation will be set two (2) weeks before the date set for trial.

B. Trial attorneys who will try the case shall personally appear at the trial confirmation. In the event a trial attorney has a conflict preventing that attorney's presence, that attorney shall make arrangements to have another attorney present who is familiar with the case. The appearing defense attorney shall have previously conferred with the client.

C. In the event the case is not disposed of at trial confirmation, and the case is confirmed as ready to proceed to trial, all offers on either side are deemed withdrawn and the case will proceed to trial on all counts as charged. Any other proposed disposition of the case by way of plea thereafter shall only be on approval of the court. (Effective July, 2000)

## **RULE 14.6            CONTINUANCES**

A. All criminal cases set for trial will proceed to trial on the date scheduled in the absence of good cause. No continuances will be granted unless the court is presented convincing proof of good cause for a continuance in accordance with Penal Code § 1050. A stipulation of counsel to a trial continuance does not necessarily constitute good cause.

B. Motions for trial continuances shall be made in writing and served in accordance with Penal Code § 1050(b), unless the necessary showing is made under § 1050(c).

C. In felony cases after arraignment on the information or indictment, all motions for trial continuances shall be made to the Presiding Judge.

D. If, on the date set for trial, counsel is actually engaged in the trial of another case, the case scheduled for trial will trail from day to day until completion of the trial in the other case, or to such other date as set by the court under § 1050(c). (Effective July, 2000)



# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 14.7                    HABEAS CORPUS WRITS**

A. All petitions for writ of habeas corpus shall be prepared as specified by the California Rules of Court and filed with the Clerk. Unless otherwise directed by the court, each petition will be assigned a unique case number by the Clerk and immediately forwarded to the research staff for review.

B. Once this initial review has been completed, the petition will be sent to the designated judge. Unless otherwise specified by the Presiding Judge, all such petitions will be acted upon by the judge assigned to hear criminal law and motion matters. Action on the petition will be taken in accordance with the provisions of the California Rules of Court.

C. Priority will be given to emergency petitions, i.e., those alleging that time is of the essence to protect the petitioner from death or permanent disability. Ex parte communications are discouraged.

D. Petitions that do not comply with the California Rules of Court and these rules may be summarily denied. Habeas Corpus petitions are not a substitute for a timely appeal, and should not be sought until all legal and administrative remedies have been exhausted.

E. The repeated filing of unmeritorious petitions may be deemed an abuse of process, and may subject the petitioner to appropriate sanctions as ordered by the court. (Effective July, 2000)

## **RULE 14.8                    WRITS OF MANDATE AND PROHIBITION**

A. Petitions for extraordinary relief by way of mandamus and/or prohibition shall be filed and processed in accordance with the general procedures specified above for habeas corpus petitions. Such relief should not be sought until all existing legal and administrative remedies have been exhausted.

B. When an emergency situation exists, it is the responsibility of the petitioner to clearly indicate the nature of the emergency in the petition, and to also inform the Clerk at the time the petition is filed. For the purposes of these petitions, emergency situations include actions in which time is of the essence to prevent denial of a fundamental constitutional right or undue hardship.

C. Petitions that are defective, incomplete, lack adequate supporting documentation, or fall outside the scope of the court's jurisdiction may be summarily denied. Abuse of the writ process may subject the petitioner to appropriate sanctions. (Effective July, 2000)

# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 14.9**

## **ATTORNEY, EXPERT AND INVESTIGATION FEES**

The fees for an attorney appointed to represent a defendant in a criminal case, the investigator and interpreter fees and fees for medical, psychological and psychiatric services are governed by the Fresno County Courts Appointed Counsel/Expert General Claim Processing Practices, a copy of which is available from the Clerk. (Effective July, 2000)

# FRESNO COUNTY SUPERIOR COURT

## **RULE 15: MISDEMEANOR CASE RULES**

### **RULE 15.1            MISDEMEANOR FILINGS**

The court shall endeavor to dispose of misdemeanor cases as follows: 90% within thirty (30) days after the defendant's first court appearance, 98% within ninety (90) days after the defendant's first court appearance, and 100% within 120 days after the defendant's first court appearance. (Effective July, 2000)

### **RULE 15.2            CONTINUANCES**

All motions for a continuance of a trial shall be made in the assigned trial department. (Effective July, 2000)

### **RULE 15.3            MISDEMEANOR PRETRIAL HEARING**

A.     **Pretrial Hearing.** At such time as designated by the court, a pretrial hearing (formerly jury motion) will be held. Unless otherwise ordered by the court, the defendant shall personally appear at the hearing, unless appearing by counsel.

B.     **Duties at Pretrial Hearing.** All motions for continuance, waiver of jury, change of plea or other procedural matters shall be presented at the hearing. If the case is not settled at the hearing, the court may order the defendant to appear at the trial readiness hearing prior to the trial date. On the date set for trial there shall be no continuances or other delay of the trial, except on a showing of good cause based on facts not known by the moving party at the time of the pretrial hearing. (Effective July, 2000)

### **RULE 15.4            MISDEMEANOR TRIAL READINESS**

Each week at such time as designated, the court may call a trial readiness calendar consisting of all criminal and traffic jury trials which are scheduled for trial that week. All trial counsel shall appear unless excused by the court. (Effective July, 2000)

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# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 16: MOTIONS AND HEARINGS IN MISDEMEANOR CASES AND FELONY CASES PRIOR TO ARRAIGNMENT ON INFORMATION OR INDICTMENT**

### **RULE 16.1      ASSIGNMENT OF MOTIONS**

**All motions or other matters not connected directly with trial, including, but not limited to motions to suppress, to amend the accusatory pleading, for discovery, dismissal, sanctions, interpreters, or substitution of counsel shall be made in the assigned department.** (Effective July, 2000)

### **RULE 16.2      FILING OF MOTIONS**

A. Unless otherwise ordered by the court, motions in felony cases shall be filed in writing no later than five (5) court days before the hearing, with proof of service on all parties.

B. Unless otherwise ordered by the court, motions in misdemeanor cases shall be filed in writing no later than ten (10) court days before the hearing.

C. Motions shall contain a notice of motion, the motion itself, a declaration or affidavit in support thereof and a memorandum of points and authorities.

D. Responsive pleadings and points and authorities in opposition to either category of motion shall be filed no later than two (2) court days prior to the hearing with proof of service on all parties.

E. Each paragraph of any declaration shall be numbered sequentially. The original and all copies of exhibits and attachments shall be tabbed and shall be referred to in the pleadings or papers by tab identification. (Effective July, 2000)

### **RULE 16.3      MOTIONS TO SUPPRESS EVIDENCE**

A. Motions to suppress pursuant to Penal Code § 1538.5 shall state with particularity the items sought to be suppressed and the legal basis for suppressing each item and a brief statement of relevant facts. Such motions shall also set forth the names of any necessary witnesses then known to the moving party.

B. The District Attorney shall arrange for relevant prosecution witnesses to be available at the hearing on the motion.

C. The attorney for the moving party shall be responsible for any witnesses the defense intends to call. (Effective July, 2000)

# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 16.4            RENEWAL OF MOTIONS**

Motions decided prior to trial shall not be renewed unless the motion could not, with due diligence, have been made earlier. Any renewed motion shall be based upon grounds of new evidence which could not, with due diligence, have been discovered earlier, or if the original motion was denied without prejudice and leave to renew has been granted by the court. (Effective July, 2000)

# FRESNO COUNTY SUPERIOR COURT

## **RULE 17: FELONY CASE RULES**

### **RULE 17.1      FELONY FILINGS**

The court shall endeavor to dispose of felony filings (by plea, finding of probable cause, or dismissal) excluding murder cases in which the prosecution seeks the death penalty as follows: 90% within thirty (30) days after the defendant's first court appearance, 98% within forty-five (45) days after the defendant's first court appearance, and 100% within ninety (90) days after the defendant's first court appearance. (Effective July, 2000)

### **RULE 17.2      EARLY DISPOSITION, ARRAIGNMENT, SENTENCING AND CERTIFICATION**

A.    **Early Disposition.** At the time of arraignment on a felony complaint filed in the Central Division, a defendant may choose to attempt settlement of the case prior to the setting of a preliminary examination. Upon the defendant providing an appropriate waiver of time, the arraignment court will set the matter in a designated department for an early disposition hearing. If the matter is resolved at that hearing by way of a plea, sentencing will take place in that department. If the matter is not resolved and a preliminary hearing is not waived, the case will be calendared in the appropriate department for preliminary examination.

B.    **Arraignment.** Upon conclusion of the preliminary examination, for those persons held to answer, the matter will be certified to a designated department for arraignment. Defendants shall be personally present at the time of arraignment.

C.    **Sentencing.** Any court which receives a plea of guilty or nolo contendere to a felony charge in Fresno County shall refer the case to the Probation Office for a pre-sentence investigation and report and shall appoint a time for pronouncement of judgment and sentencing in the designated department. If, in the discretion of the court, the provisions of Penal Code § 288.1 or Welfare & Institutions Code § 3051 appear applicable, the court may also refer the defendant for a psychiatric evaluation pursuant to those Code provisions for report to the designated department.

D.    **Certification.** A court which has suspended criminal proceedings pursuant to Penal Code § 1368 shall appoint a psychiatrist or licensed psychologist or two such professionals in accordance with Penal Code § 1369(a) and refer the matter to the designated department. (Effective July, 2000)

# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 17.3      PRELIMINARY EXAMINATIONS CALENDARED**

Preliminary examinations shall be calendared in the assigned felony departments unless a request is made in the arraignment court for an early disposition hearing. (Effective July, 2000)

## **RULE 17.4      CONTINUANCES OF PRELIMINARY EXAMINATIONS**

All motions for continuance of a preliminary examination shall be made in the assigned department. (Effective July, 2000)

## **RULE 17.5      TRIAL SETTING**

A. At the time of the arraignment and plea, the court will set a date for trial within the statutory period. This is the only notice of the trial date that will be given counsel and the defendant.

B. Reciprocal informal discovery, pursuant to Penal Code § 1054, will be ordered at the time of the arraignment. Any additional discovery requests must be made in a duly filed and noticed written motion, complying with all statutory requirements applying to such motions and Rule 18.1. (Effective July, 2000)



# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 18: MOTIONS AND HEARINGS IN FELONY CASES FOLLOWING ARRAIGNMENT ON INFORMATION OR INDICTMENT**

### **RULE 18.1            MOTIONS IN GENERAL**

A. At arraignment, counsel shall advise the court if pretrial motions are expected to be filed. The court will then set a hearing date and dates by which moving and responsive papers must be filed.

B. Except as otherwise authorized by the court or required by statute, all motions and accompanying papers must be filed with the Clerk.

C. All motions shall contain in the upper right-hand corner of the first page the filing party's estimate of the overall time required for the hearing of the matter, the date and department number of the hearing, and a request for a transportation order if a defendant or necessary witness is in custody. If the court has not previously ordered the defendant to be present at the pretrial motion hearing and the defendant is not in custody, counsel for the defendant shall give written notice of the hearing date to the defendant and file proof of service of same at the time the motion is filed. Failure to request a transportation order when one is required or to give such notice to a non-custody defendant may result in the motion being taken off calendar.

D. All motions and accompanying papers shall be separately filed no later than 4:00 p.m. on the date set for filing the motion. All filings shall be accompanied by proof of service on the opposing party or parties. Copies of the motion and accompanying papers shall be submitted to the Clerk of the department hearing the motion and to the designated research attorney.

E. The responding party shall file with the Clerk responding points and authorities, together with proof of service on all other parties no later than 4:00 p.m. on the date set for filing the response. A copy of the response, along with points and authorities, shall be submitted to the Clerk of the department hearing the motion and to the designated research attorney.

F. Continuances of hearings on motions shall not be granted except for good cause shown and upon the filing of a written notice of intention to move for such continuance with the Clerk, together with proof of service on all other parties two (2) court days prior to the hearing.

G. Motions and accompanying papers pursuant to Penal Code § 995 shall include the following:

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1. A brief statement in summary form of the facts as set forth in the preliminary examination transcript;

2. A statement of the issues, specifically identifying why the information or indictment should be set aside;

3. Where defendant intends to rely upon some testimony in the transcript, the moving papers shall contain references to the testimony, identified by page and line number of the transcript; and,

4. A statement of the authorities upon which defendant relies with explanation as to why they are applicable. Mere citation of sections of the California Penal Code and the U.S. Constitution will not be sufficient.

H. Each paragraph of any declaration shall be numbered sequentially. The original and all copies of exhibits and attachments shall be tabbed and shall be referred to in the pleadings or papers by tab identification. (Effective July, 2000)

### **RULE 18.2                    MOTIONS TO SUPPRESS EVIDENCE**

A. The following requirements apply to motions to suppress evidence and are in addition to the requirements of Rule 18.1.

1. Moving papers shall include the following:

a. A complete statement of all the facts upon which the moving party relies in support of the motion. If the facts are based on cited documentation (such as police reports), a copy of the cited documentation shall be attached.

b. A complete specification of the exact matters or things sought to be suppressed or returned. ("All evidence seized on . . ." without listing the items, is not a complete specification.)

c. A statement of the issues, specifically identifying in what regard the search or seizure is defective. The statement shall specifically state the theory or theories which shall be relied upon and urged for the suppression of the evidence.

d. A statement citing the specific authority or authorities which will be offered in support of the theory or theories upon which suppression of evidence is urged.

e. Where a motion to suppress was made at the preliminary examination, any references in the supporting papers to such

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testimony shall be identified as to volume number, if more than one volume, and page and line number in the transcript.

f. Where no motion to suppress was made at the preliminary examination and if the moving party requests testimony be received by the court at the hearing, the first page of the notice of motion, or motions, shall so indicate. The failure to so indicate shall be construed by the court as a request by the moving party to submit the matter on the statement or statements of fact and the argument of counsel.

g. Where a motion to suppress was made at the preliminary examination and if the moving party requests additional testimony be received by the court at such hearing, the first page of the notice of motion, or motions, shall so indicate. The failure to so indicate shall be construed by the court as a request on the part of the moving party that the matter be submitted on the transcript(s) of prior proceedings and the argument of counsel.

2. Responding papers to the motion shall include the following:

a. A complete statement of all the facts relied upon, if different from those provided in the moving papers.

b. A statement of the issues, specifically identifying in what regard the search or seizure is justified. The statement shall specifically state the theory or theories which shall be relied upon and urged to justify the search and seizure.

c. A statement citing the specific authority or authorities which will be offered in support of the theory or theories upon which justification for the search or seizure is urged.

d. Where no motion to suppress was made at the preliminary hearing and if the responding party requests testimony be received by the court at the hearing, the first page of the notice of motion or motions shall so indicate. The failure to so indicate shall be construed by the court as a request by the responding party to submit the matter on the statement or statements of fact and the argument of counsel.

3. Reply papers relating to the motion, if any, shall include the following:

a. A statement of all additional facts upon which the moving party relies and reply to responding party's statement of facts.

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b. A statement of all additional issues upon which the moving party relies and reply to the responding party's statement of issues.

c. A statement of any additional authorities upon which the moving party relies in reply to the responding party's statement of authorities.

### B. Motions for Traverse of Search Warrant:

1. In accordance with *Franks v. Delaware* (1978) 438 U.S. 154, 90 S.Ct. 2674, as explained in *People v. Wilson* (1986) 182 Cal.App.3d 742, 227 Cal.Rptr. 528, the moving party must do the following:

a. Make a Penal Code § 1538.5 motion.

b. Establish standing to contest the search.

c. Point to specific portions of the affidavit which contain false information, or demonstrate with specificity what information it is claimed was omitted.

d. Allege that the misstatements or omissions were made by the officer/affiant with the intent to deceive, or were made recklessly (i.e., with utter disregard for the truth). Allegations of negligence, or allegations failing to refer to the state of mind of the affiant, are insufficient.

e. Demonstrate that the alleged misstatements or omissions were material. Materiality in this context means that the affidavit with the objectionable language taken out or omissions added would be lacking sufficient probable cause.

f. Submit affidavits or other competent evidence demonstrating the probable truth of the defense allegations, or satisfactorily explain the absence of such affidavits.

C. If any motion involves a warrant, the moving papers shall include a copy of the warrant and its affidavit.

D. Failure to comply with the above-stated rules may result in appropriate sanctions. In the case of the moving party, this may include a summary denial of the motion. (Effective July, 2000)

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## **RULE 19: TRAFFIC INFRACTION CASES**

### **RULE 19.1            TRIAL OF TRAFFIC INFRACTIONS**

At the discretion of the court, the court may conduct a trial of the defendant charged with an infraction which is a violation of the Vehicle Code or of a local ordinance adopted pursuant to the Vehicle Code in the following manner, as per Vehicle Code § 40901:

A. If the defendant waives his or her rights to confront and cross-examine witnesses, to subpoena witnesses on defendant's behalf, and to hire counsel at defendant's own expense, the trial may proceed at the time of arraignment before the judge conducting the arraignment. Prior to entry of a waiver of these constitutional rights, the court shall inform the defendant in writing of the nature of the proceedings and of these rights, and ascertain that the defendant knowingly and voluntarily waives these rights before proceeding.

B. If the non-English speaking population of Fresno County which speaks any one language exceeds 5% of the total population of the county, a written explanation of the proceedings and the rights of the defendant referred to in subsection (A) will be available in that language.

C. The court may accept testimony or other relevant evidence introduced in the form of a notice to appear issued pursuant to Vehicle Code § 40500 or any business record or receipt. (Effective January, 2002)

### **RULE 19.2            TRIAL BY DECLARATION**

Pursuant to Vehicle Code § 40902, a defendant charged with Vehicle Code infractions or violations of local ordinances adopted pursuant to the Vehicle Code may waive his or her right to personally appear for trial, and may request trial by written declaration without a personal appearance. Trial by declaration is available to any defendant who wishes to contest the citation and who timely requests trial by declaration. Trial by declaration shall be requested and conducted in accordance with Rule 828 of the California Rules of Court. Trial by declaration is not available if defendant has been notified that a personal appearance is mandatory. A defendant electing this procedure shall notify the Clerk of his or her current address and of any changes thereof. (Effective January, 2002)

### **RULE 19.3            TRAFFIC INFRACTION APPEALS**

A party may appeal an unfavorable decision made in the trial court to the Appellate Division of the Superior Court pursuant to Rules 100 through 108 and

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180 through 191 of the California Rules of Court. The Notice of Appeal (form TR1-55) must be filed with the Clerk of the trial court within thirty (30) CALENDAR DAYS after the rendition of judgment. No extension of time is allowed.

The appeal must be directed toward errors of law only. An appeal is not a retrial, and introduction of new evidence will not be permitted. The forms and instructions on appeal procedures are available in all traffic court locations in Fresno County. (Effective January, 2002)

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## IV. MISCELLANEOUS RULES

### RULE 20: RULES OF GENERAL APPLICATION

#### **RULE 20.1                    JURY INSTRUCTIONS AND VERDICT FORMS**

A.        Where there is a trial by jury, the parties shall request instructions by submitting proposed instructions to the trial judge on the first day of trial. The latest edition of CALJIC or BAJI forms shall be used wherever applicable.

B.        Proposed pattern jury instructions, which have been modified by a party, shall clearly indicate any proposed change.

C.        The party requesting a BAJI or CALJIC instruction which contains one or more blanks shall type in the blank space all the words required to adapt the form for use in the pending case.

D.        Instructions shall be submitted either on a form with a detachable top or in a multi-page format. If a form with a detachable top is used, the top portion of the instruction shall contain the name of the party upon whose behalf it is requested and citation to supporting authority. If that instruction is used, the detachable bottom of the form will be given to the jury for use during deliberations. If a multiple-page format is used, one page shall contain the name of the party upon whose behalf it is requested and citation to supporting authority. A separate page or pages shall contain the instruction itself. If that instruction is used, only the page or pages containing the instruction itself will be given to the jury for use during deliberations.

E.        In civil cases each party shall submit proposed verdict forms suitable for use by the jury in the pending case. In criminal cases the court may order the prosecution to submit proposed verdict forms, including lesser offenses, suitable for use by the jury in the pending case. Each verdict must be submitted on a separate form, must contain the caption of the case, and must not indicate the party upon whose behalf the verdict is submitted. (Effective July, 2002)

#### **RULE 20.2                    SOUND RECORDINGS TO BE OFFERED AS EVIDENCE AT TRIAL**

A.        Any party intending to offer a sound recording in evidence at trial shall prepare a transcript of the sound recording at least two (2) weeks before trial and serve such transcript and a copy of the recording on all other parties. Any party disputing the accuracy of the transcript shall prepare his own transcript of the sound recording identifying the disputed portions and serve that transcript on all other parties no later than three (3) days before trial. When disputed, the parties shall meet and confer in a good faith effort to resolve their differences.



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B. In the event that the differing versions cannot be resolved by the parties, they shall alert the Presiding Judge at the trial readiness hearing to reserve an appropriate amount of time in the assigned trial court to settle the dispute before summoning a jury panel.

C. Nothing herein is intended to contravene the applicable rules of discovery or valid claims of confidentiality provided by law. If a party is entitled to maintain the confidentiality of a sound recording and chooses to do so until trial, a proposed settled transcript shall be lodged with the court when the sound recording is marked for identification. The opposing party shall be allowed a reasonable opportunity to listen to the sound recording, prepare a proposed transcript and lodge objections before the sound recording is received as evidence.

D. Each transcript shall be certified by the person preparing it. In the event the sound recording is in a language other than English, the certification shall also include a certification by the person translating the sound recording.

E. The propounding party shall prepare a sufficient number of copies of the transcript for distribution as ordered by the court. (Effective July, 2000)

### **RULE 20.3                    CONFIDENTIALITY OF JURORS' DECLARATIONS**

Declarations submitted to the court by prospective trial and grand jurors are held confidential unless a post-trial application to release is approved by the court. (Effective July, 2000)

### **RULE 20.4                    REQUESTS TO CONDUCT MEDIA COVERAGE**

A. Requests for media coverage (photographing, recording or broadcasting of court proceedings by the media using television, radio, photographic or recording equipment) shall comply with the provisions of California Rules of Court, Rule 980.

B. The court will rule on the request at the hearing. (Effective July, 2000)

### **RULE 20.5                    DANGEROUS EVIDENCE**

A. Controlled or toxic substances in any form must be securely sealed in containers so that odors cannot be emitted.

B. Blood or urine samples, hypodermic needles or other objects containing blood, urine or other bodily fluids shall be permitted in the courtroom only when enclosed in a container sufficient to protect court personnel and other persons in the court.

C. Any firearms which are to be admitted into evidence must be examined by the bailiff and rendered inoperable prior to being brought into the courtroom.

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D. Prior approval of the court shall be obtained before any of the above objects are brought into any courthouse as potential evidence. (Effective July, 2000)

### **RULE 20.6                    FACSIMILE MACHINE (FAX) FILING AND NOTIFICATION**

A. A party who has established a filing fee account in advance may file pleadings and documents by facsimile machine directly with the Clerk. All such filings must fully comply with the provisions of the California Rules of Court. Any party electing to file by facsimile shall be deemed to have consented to service of notices by the court by facsimile machine.

B. In addition to any other fees imposed by law, a party filing by fax directly with the court shall pay a fee of \$1.00 for each page of the paper. This fee shall not apply to documents filed by fax in a criminal or traffic case.

C. Any document received with missing or partial pages, or other facial defects, shall not be filed but shall be returned by the Clerk to the sending party by mail.

D. Where these rules require notification by letter, to court or counsel, such notification may be by fax. The court has several fax numbers, and notification to a specific judge shall be addressed to him or her by name and shall be transmitted to the fax number nearest his or her chambers.

E. A list of fax numbers may be obtained from the Clerk by a fax request to (559) 488-1976, citing this rule. (Effective July, 2000)

### **RULE 20.7                    TRIAL READINESS HEARING**

A. A trial readiness hearing for all cases on the master calendar shall be heard in the department of the Presiding Judge on the Friday before trial, at a time designated by the Presiding Judge, or on a date and at a time designated by the Presiding Judge. The Presiding Judge in his or her discretion may excuse a case or cases from the trial readiness hearing.

B. The attorney trying the case is required to be personally present at this hearing. In the event the trial attorney has a conflict preventing his or her presence, the trial attorney must make arrangements to have another attorney present, who is familiar with the case and its state of readiness for trial, and who has authority to confirm and/or continue the trial date.

C. Any party may appear telephonically with prior approval of the assigned court. (Effective July, 2000)

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## RULE 20.8

## IDENTIFICATION OF DOCUMENT PREPARERS

A. In this section:

1. “Document preparer” means a person, other than an attorney or an employee of an attorney, who prepares for compensation a paper for filing; and

2. “Paper for filing” means any paper, as defined in Rule 1.4, prepared for filing on behalf of a party.

B. A document preparer who prepares a paper for filing shall print on a separate sheet of paper the preparer’s name, address, telephone number, FAX number and e-mail number, if any. This separate paper identifying the preparer shall be served on the opposing party, filed with the court, and identified in the proof of service.

C. An attorney, or an employee of an attorney, who prepares a paper for filing as “in pro per” shall print on a separate sheet of paper the preparer’s name, address, telephone number, FAX number and e-mail address, if any. This separate paper identifying the preparer shall be served on the opposing party, filed with the court, and identified on the proof of service.

D. As an additional requirement, document preparers shall type their initials or the initials of their business and the runner numbers in the caption under the heading “Attorney or Party Without Attorney” on the face sheet of the moving papers.

E. A document preparer shall, not later than the time at which a paper for filing is presented for the party’s signature, furnish to the party a copy of the paper.

F. A document preparer shall not execute any paper on behalf of a party.

G. Nothing in this rule shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

H. These requirements are in addition to those regarding legal document assistants set forth in the Business and Professions Code. (Effective July, 2000)

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## **RULE 21: APPEALS TO THE APPELLATE DIVISION**

### **RULE 21.1            THREE JUDGE PANEL**

All infraction, misdemeanor, and limited civil case appeals are decided by a majority of a three (3) judge panel of the Appellate Division. (Effective July, 2000)

### **RULE 21.2            FILING OF APPEAL, BRIEFING AND HEARING DATES**

Appeal papers shall be filed with the Clerk. Briefing and hearing dates will be set by the court. Each party shall ensure that complete documentation is submitted in a timely manner. (Effective July, 2000)

### **RULE 21.3            BRIEFING PROCEDURE**

A.     An original and three (3) copies of each brief shall be filed with the Clerk. The original, which will be maintained in the court file, shall have a standard two-hole punch on the top when submitted for filing. Each of the three (3) copies shall have a standard three-hole punch on the left side when submitted for filing. Notwithstanding the California Rules of Court, briefs shall not be bound.

B.     All briefs shall include appropriate points and authorities, clear identification of the issue(s) being raised and valid proof of service. Because appeals are concerned with issues of law, mere factual arguments will generally be insufficient. If applicable, a reporter's transcript and/or a settled statement on appeal shall be submitted.

C.     A party may file a request for an extension of time to comply with the briefing schedule with the Presiding Judge of the Appellate Division. Such request shall include a separate declaration providing good cause for the extension of time, a proposed order and a properly completed checklist for proposed orders form. The checklist for proposed orders form is available from the Clerk's office.

D.     Failure of the appellant to file a timely opening brief or to otherwise comply with applicable rules may result in dismissal of the appeal. (Effective July, 2000)

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**RULES 22-29: RESERVED.**

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## V. FAMILY LAW RULES

### RULE 30: GENERAL PROVISIONS

#### **RULE 30.1      RESULT OF FAILURE TO COMPLY**

Failure to comply with these Family Law Rules may result in one or more of the following on the request of the other party or on the court's own motion:

- A. Making an order based solely on the pleadings properly before the court.
- B. Making or vacating orders as the court deems appropriate under the circumstances.
- C. Continuing the matter.
- D. Awarding attorney's fees and costs against the non-complying party, without the requirement of filing either an Income and Expense Declaration or a noticed motion.
- E. Removing the matter from calendar.
- F. While it is intended that the court will follow the rules and policies set forth, these rules shall not prevent the exercise of judicial discretion whenever appropriate. (Effective July, 2001)

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## **RULE 31: MOVING AND RESPONSIVE PLEADINGS AND OTHER NON-TRIAL HEARINGS**

### **RULE 31.1      PROPER DEPARTMENT**

A. The Family Law Departments and the Family Support Departments are the proper departments for all law and motion hearings relating to the Family Code and those provisions of the Welfare & Institutions Code relating to support.

B. Hearing officer means the judicial officer who is assigned to hear, is hearing, or has heard the matter. (Effective July, 1999)

### **RULE 31.2      SETTING THE DATE AND TIME**

A. **Clear the Date.** No case shall be calendared for court hearing without the moving party first contacting the opposing attorney (if known) and attempting to obtain a mutually agreeable hearing date, unless notice is otherwise excused by these rules.

B. **Set the Date.** Only officers of the court and the Fresno County District Attorney, Family Support Division, may obtain a hearing date on the family law calendar by calling the calendar clerk and obtaining a date and time for the hearing.

1. The moving papers shall be filed no later than the fifth court day after the date has been obtained from the Calendar Clerk. If the moving papers are not timely filed in accordance with this provision, the attorney shall telephone the Calendar Clerk to take the matter off calendar. Failure to do so may result in sanctions.

2. If effective service is not made, the attorney shall telephone the Calendar Clerk to take the matter off calendar. Failure to do so may result in sanctions.

A self-represented party may obtain a hearing date from the Clerk at the time the party's papers are filed.

C. **Orientation and Mediation Dates.** If child custody or visitation is at issue, the dates and times for Family Court Services' orientation and mediation will be assigned by the Calendar Clerk and shall be set forth on a completed Orientation and Mediation Court Referral form. The completed Orientation and Mediation Court Referral form shall be attached to and served with the moving papers. Service of the completed Orientation and Mediation Court Referral form shall be reflected on the proof of service.

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In cases involving domestic violence with confidential information, the moving party shall complete two separate referral forms: one containing the moving party's residential information and the other containing the responding party's residential information. Both forms shall include the children's information. The moving party shall serve only the copy containing the opposing party's residential information.

D. **Attorneys Fees.** Attorneys fees may be raised in the responsive papers to a NOM/OSC even though no other financial issues were raised in the moving papers. However, the responsive papers must be accompanied by a current Income and Expense Declaration and shall comply with Rule 31.15. (Effective July, 2001)

### **RULE 31.3      TEMPORARY RESTRAINING ORDERS AND EX PARTE PROCEDURES**

A. **Applications.** Applications for ex parte orders, including a TRO shall be made in accordance with Family Code §§ 240-246, 2045, 3062-3064, 4620, 6320-6327, 7710, Code of Civil Procedure § 527 and California Rules of Court, Rule 379. **NO ex parte order shall be granted without notice to the opposing party unless the application clearly states facts showing that great or irreparable injury would result to the applicant and/or children if the matter were heard with notice.**

B. **Declarations.**

1. **Change in Status Quo.** **NOTICE! There is an absolute duty to disclose the fact that a requested ex parte order will result in a change of status quo. The statement "THIS IS A REQUEST FOR CHANGE IN STATUS QUO" shall appear in bold capital letters at the beginning of the declaration.**

The declaration in support of a request for an ex parte order which changes the status quo shall state all applicable facts describing the existing situation and supporting the requested change. In determining status quo, the court will consider actual custody/visitation practices which have occurred on a regular basis. Misleading the court or displaying a lack of candor may result in sanctions and/or vacating of the order.

2. **Exigent Circumstances.** The first paragraph of the declaration shall set forth the exigent circumstances requiring the ex parte hearing. The paragraph shall not contain a case history and shall be labeled "Reasons for Request for Ex Parte Hearing."

3. **Hearsay.** Ex parte orders will be issued only if accompanied by attached declaration(s) stating specific facts within the personal knowledge of the declarant which are adequate to support the issuance of such orders. The court will not consider inadmissible hearsay.

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### 4. Child Custody/Visitation.

a. The declaration in support of a request for an ex parte order relating to custody/visitation of a minor child shall include the following:

1) A completed UCCJA declaration;

2) A summary of the custody/visitation practices of the parties during the last twelve (12) months, the date the parents separated, and whether or not the applicant obtained custody by mutual agreement;

3) The current custody order **SHALL BE ATTACHED**;

4) Specific facts describing what immediate bodily injury or emotional harm the children may be subjected to if the current custody and/or visitation order remains in effect; and

5) No ex parte change in status quo will be granted unless clear and specific facts are stated which demonstrate that the health and welfare of the child will be in immediate danger without the change.

b. The application shall set forth a proposed specific visitation plan pending the hearing. The following should be included: the date, time, place and manner of exchange of the minor child(ren).

5. Removal From Residence. An ex parte order removing a party from a residence will not issue without recent ("recent" means within thirty (30) days absent extraordinarily good cause) facts demonstrating specific violence or threat of violence, and the date or dates thereof, and the specific physical or emotional harm that may result. The declaration shall also set forth:

a. The name and relationship of all occupants of the residence;

b. Ownership of the residence;

c. If a rental, the name(s) of the lessee(s) and their relationships to each other and/or the children; and

d. Other relevant information.

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6. Exclusive Use of Vehicle. An ex parte order granting exclusive use of a vehicle will not be made unless the declarant sets forth facts showing need, past use, and alternative transportation for the other party.

7. Payment of Obligations. An ex parte order requiring the payment of obligations is disfavored. Any request shall include financial and other facts justifying the request and an Income and Expense Declaration which includes an estimate of opposing party's gross income and any evidence thereof.

### C. Ex Parte Hearing Request.

1. Before submitting an ex parte hearing request, the party seeking ex parte relief shall contact the opposing party and attempt to resolve the conflict. If the conflict cannot be resolved, then the party seeking ex parte relief shall submit a signed declaration clearly setting forth the following:

- a. The name of the person contacted and their relationship to the matter;
- b. Dates and times of the contact; and
- c. The results of the contact.

2. The following documents shall be submitted to the court prior to the determination of whether or not an ex parte hearing shall be set:

- a. Declaration in support of request;
- b. Declaration setting forth effort to resolve the conflict;
- c. Copy of the current custody order;
- d. The Order to Show Cause and TRO forms; and
- e. Fully completed UCCJA form (in child custody cases).

All ex parte requests (i.e., OSC, TRO, UCCJA statement, supportive declarations and declaration of notice), together with any copies to be conformed, shall be securely clipped together and submitted directly to the Family Law Calendar Department, 4<sup>th</sup> Floor, Fresno County Courthouse with a cover sheet clearly marked **"EX PARTE HEARING REQUEST, ATTENTION: FAMILY LAW EXAMINER"**.

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3. If the ex parte request is granted, the moving party will be notified of the date, time, and department for the hearing. The moving party shall then deliver a copy of all documents specified in Rule 31.3(C)(2) to the opposing party, no later than 3:00 p.m. the day before the ex parte hearing unless good cause is shown. Failure to comply with this rule may result in cancellation of the ex parte hearing.

4. Notice must be provided to all parties no later than 10:00 a.m. on the court day prior to the hearing date.

5. FCS mediation may be held at the time of the ex parte hearing.

D. **Declaration of Notice.** The declaration of notice shall be submitted prior to the ex parte hearing in compliance with either 1 or 2, below:

1. The declaration shall contain:

a. The name, address and telephone number of the opposing party;

b. The specifics of the actual notice given to the opposing party; and

c. If applicable, a statement that the opposing party was notified and does not object to the ex parte orders.

2. If actual notice has not been given, the declaration must set forth **specific facts** to excuse the giving of notice. The declaration shall state the specific facts and include one or both of the following:

a. Following a good faith attempt (describe dates, times, and service attempts), the giving of notice is not possible.

b. Specific reasons why the giving of such notice would frustrate the purpose of the order and lead the applicant to suffer great or irreparable injury if the matter was heard with notice.

E. **Set Aside of Ex Parte Orders.** If a responding party requests that an ex parte order be set aside prior to the date set for the contested hearing, notice shall be given as set forth in Rule 31.3 (A) and (B). The court may order an earlier hearing date or modify the orders on a proper showing instead of setting aside the orders.

F. **Enforcement of Restraining Order.** To obtain enforcement of temporary restraining orders, applicants shall deliver a copy of the restraining order to the appropriate sheriff's office. The order shall have a file-endorsed stamp by the

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Clerk on the upper right-hand corner and the expiration date of the order shall be clearly marked on the face of the document.

Orders issued at the OSC hearing for delivery to law enforcement agencies shall include a specific expiration date. (See Family Code § 6345) (Effective July, 2000)

### **RULE 31.4                    ORDERS SHORTENING AND EXTENDING TIME**

A. Absent a stipulation and approval by the court, a request for an order shortening time shall follow the procedure set forth in Rule 31.3. A declaration demonstrating good cause must be included. The opposing attorney, if the opposing party is represented by counsel, must be contacted in an attempt to clear the hearing date.

**If custody and/or visitation are at issue, the dates and times for Family Court Services' orientation and mediation will be assigned by the Calendar Clerk and shall be set forth on a completed Orientation and Mediation Court Referral form. The completed Orientation and Mediation Court Referral form shall be attached to and served with the moving papers. Service of the completed Orientation and Mediation Court Referral form shall be reflected on the proof of service.**

**In cases involving domestic violence with confidential information, the moving party shall complete two separate referral forms: one containing the moving party's residential information and the other containing the responding party's residential information. Both forms shall include the children's information. The moving party must serve only the copy containing the opposing party's residential information.**

B. The court will favor an order shortening time for additional issues to be heard on the same date previously set for an OSC/NOM as follows.

1. The request shall include a declaration that the opposing counsel or party has been noticed of the intent to seek an order shortening time and has been informed of the additional issues. The declaration shall include a statement as to whether the opposing party agrees to or opposes the order shortening time, and if applicable, the specific reasons for opposition.

2. At the discretion of the court, all of the additional issues raised may or may not be heard at this hearing. This shall not, however, preclude the court from making an order on the original issues set for hearing.

3. The Court may require a full ex parte hearing pursuant to Rule 31.3.



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4. Attorney fees and sanctions may be awarded either party for the abuse of this process. (Effective July, 1999)

### **RULE 31.5                    ONE SETTING PER CALENDAR CALL**

Except for the Fresno County District Attorney, Family Support Division, attorneys shall set only one case per calendar call. If an attorney has more than one appearance on a calendar call, that attorney shall make every reasonable effort to reschedule the hearing. (Effective July, 1998)

### **RULE 31.6                    MOVING AND RESPONSIVE PLEADINGS**

A. **Filing and Serving.** The original and one copy of all moving and responsive law and motion pleadings must be filed. A true and complete copy shall be served on the opposing party. All parties shall bring an extra file-conformed copy of their pleadings to the hearing.

B. **Copy to Family Support Division.** If child support, spousal support or family support is payable through the Family Support Division, or either party or the child(ren) is receiving public assistance, a copy of the pleadings shall be mailed to the District Attorney, Family Support Division with a proof of service. NOTE: If public assistance is being paid, the District Attorney is an indispensable party to the action. **Failure to comply with this rule may result in the matter being continued to the next available date to allow service or being taken off calendar.**

C. **Late Filing of Responsive Pleading.** A responsive pleading may be filed or served late for good cause or if the opposing party expressly consents to the late service. A copy of the pleading shall be delivered to the hearing officer's Clerk no later than 3:00 p.m. on the day before the hearing. (Effective July, 2001)

### **RULE 31.7                    PRE-HEARING SETTLEMENT EFFORTS**

Parties shall confer before the scheduled hearing date to resolve or limit the issues. Failure to confer and attempt to settle in good faith shall have a bearing on attorney's fees to be awarded. This rule does not apply in cases where there are allegations involving domestic violence and neither party is represented by an attorney. (Effective July, 1998)

### **RULE 31.8                    MATTERS OFF CALENDAR**

A. **Notify Clerk.** If a case is to be taken off the family law or family support calendar, the moving party shall notify the Clerk unless it is after 3:00 p.m. the day before the hearing. The hearing officer's Clerk shall be called on all cases which are continued on or after 3:00 p.m. the day before the hearing. Unless the court is so notified, both parties must appear on the hearing date and advise the

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court of the disposition of the matter and why sanctions should not be imposed for failure to abide by this rule. The court may order sanctions for violation of this rule.

B. **Consent of Parties.** A hearing relating to child custody or visitation shall not be taken off calendar after mediation or evaluation without the written consent of all parties. If the matter has been taken off the calendar in violation of this rule, the court may hear the matter as calendared.

C. **Settlement Conference or Objection Hearing to Family Court Services Recommendation.**

1. Before withdrawing an objection, the objecting party shall notify the Clerk in the department where the matter is set to be heard, the responding party and **Family Court Services** in writing that the objection is withdrawn.

2. If the FCS objection hearing is taken off calendar or the objecting party does not appear at the hearing, the matter may be submitted on the FCS recommendation and the court may, in its discretion, adopt the recommendation and make it an order.

3. If the objection is withdrawn because of a stipulation which resolves the issues, the stipulation and order shall be submitted for signature to the hearing officer. Pending receipt by the court of the stipulation and proposed order, the objection hearing shall be continued to a specified date certain. (Effective July, 2001)

### **RULE 31.9      CONTINUANCES**

A. **Notify Clerk.** If a case is to be continued by agreement, the moving party shall, as early as possible, notify the Calendar Clerk. The parties may call the Calendar Clerk to obtain the next available hearing date. A letter or stipulation confirming the new date shall be submitted to the Calendar Clerk. Unless the court is so notified, both parties must appear on the hearing date and advise the court of the disposition of the matter and why sanctions should not be imposed for failure to abide by this rule. The court may order sanctions for violations of this rule.

1. **Court Permitted Continuances.** Permission of the hearing officer shall be obtained before a stipulated continuance is granted if it is after 3:00 p.m. on the day before the hearing. The court must also approve the new hearing date if it is prior to the Clerk's next available hearing date.

2. **Notify Family Court Services or Family Support Division.** When appropriate, FCS and FSD must also be notified of continuances by the party requesting the continuance.

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B. **Temporary Restraining Order.** Temporary restraining orders shall terminate on the date of the hearing, unless an order extends the effective date. The party shall deliver to the sheriff's office a conformed copy of the stipulation and order or reissuance which shall remain in effect to the new hearing date.

C. **Contempts.** Continuances of contempt hearings must be requested in open court or obtained by written stipulation signed by the citee. (Effective July, 1998)

### **RULE 31.10            PRESENCE OF PARTIES AND ATTORNEYS**

A. **Present at Calendar Call.** The parties or their attorneys shall be present in court when the case is called, unless they have previously checked in with the bailiff. If an attorney or party fails timely to appear, the court may place a courtesy call to the attorney or party prior to taking any action on the case.

B. **Calendars.** Attorneys shall bring their calendars to court.

C. **Removal from Calendar.** Failure of the moving party to appear or to have checked in with the bailiff may result in the matter being removed from the calendar or denial of the relief requested. If the responding party has appeared, his or her attorney's fees and costs may be awarded.

D. **Attorney Fees Award.** Any attorney or party who will be unavoidably delayed shall immediately notify the court. Even if such notice is given, failure to appear within a reasonable time or failure to establish good cause for the delay shall be deemed sufficient cause for awarding attorney's fees, removing the case from calendar, or proceeding to hearing. (Effective January, 2000)

### **RULE 31.11            CONDUCT OF HEARINGS**

A. **Relief Based On Pleadings: California Rules of Court, Rule 1225(a) and Rule 323(a).** The court may grant or deny relief solely on the basis of pleadings without the presentation of oral testimony except for good cause shown. The court may consider only those pleadings and declarations filed with the court when granting or denying orders. Permission to take oral testimony is within the discretion of the court. Reasonable cross-examination of a party declarant may be permitted without advance written notice.

All relevant and admissible facts to be asserted by a party or a witness shall be set forth in full on attached declarations, served with the pleadings, and signed under penalty of perjury by the declarant.

A party seeking to present oral testimony at the hearing (other than a contempt) shall give written notice to all parties and the court at least five (5) court days before the scheduled hearing, specifying the following:

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1. The reasons why declarations cannot be obtained;
2. A statement of the testimony expected to be elicited;
3. An estimate of the time necessary to be devoted to the taking of testimony; and
4. The name, address and telephone number of the declarant, unless legally confidential.

B. **Thirty Minute Limitation.** The law and motion calendars are limited to matters which take no more than fifteen (15) minutes per side of total court time, **including in-chambers conferences.** The parties shall give the court an accurate estimate of the time necessary for the hearing. The hearing officer shall determine if the time estimated by parties is realistic.

C. **A settlement conference shall be calendared by the hearing officer prior to setting the matter for a long cause hearing date.** Temporary orders, based on the pleadings, may be made by the law and motion hearing officer before the case is set on the settlement conference calendar. Unless the District Attorney is a moving or responding party, the District Attorney need not file papers or appear at the settlement conference.

D. Parties who have matters set for settlement conferences must comply with the requirements of Rule 36. In the event the settlement conference involves the issue of child custody/visitation, Rule 34.7(B) shall also be followed as part of the settlement conference statement.

E. If one party fails to appear at the settlement conference without good cause, the court may impose sanctions, which may include resolution of contested issues against the non-appearing party, as well as attorney fees and/or costs.  
(Effective July, 1998)

### **RULE 31.12      OSC CONTEMPT**

A. **Attorney for Citee.** If the citee is unable to afford counsel, the public defender may be appointed and the citee will be ordered to proceed immediately to the Public Defender's Office.

B. **Order After Hearing.** The order after hearing must set forth all findings of the court.

1. Validity of the order;
2. Knowledge of the order by the citee;

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3. Ability of the citee to have complied with the order for the specified violation(s); and

4. Willful violation of the order by the citee for the specified violation(s).

Thereafter there shall be set forth the orders of the court with regard to the finding of contempt, and the sentencing. No contempt order will be signed by the court without compliance with the foregoing.

C. Attorneys are expected to advise their clients in advance of the hearing that there is no court policy that a stay of execution will be granted.

D. The District Attorney will only prosecute contempt actions which are filed by the District Attorney. (Effective July, 1998)

### **RULE 31.13      COUNTY PRISONERS**

If a prisoner in a Fresno County Detention Facility is a party in a law and motion case, the attorney for either the prisoner or opposing party shall notify the bailiff of the Family Law Department/Family Support Department of this fact by 12 noon on the day before the hearing. The notification should be in writing, if possible, giving the full name and birth date of prisoner and the title and case number of the matter, so that the prisoner may be present at the hearing. (Effective January, 1999)

### **RULE 31.14      ATTORNEYS' FEES AND COSTS**

A. **Income and Expense Declaration.** Except in matters involving sanctions or enforcement, attorney's fees and costs will not be awarded unless an Income and Expense Declaration is filed within the preceding ninety (90) days.

B. **Acceleration Provision.** If attorney's fees and costs are awarded on a monthly installment basis, the following acceleration provision shall apply -- "If any payment is ten (10) days delinquent, the entire balance remaining will immediately become due and payable."

C. **Award From Assets.** If liquid community assets exist, an award of attorney's fees and costs may be made to one or both attorney(s) from this source.

D. **Fees in Excess of \$2,500.00.** If attorney's fees and costs of litigation (including fees for experts) are requested in a combined amount in excess of \$2,500.00, the request shall be supported by a separate declaration signed by the attorney, describing services performed, time expended, hourly rate, and all reasonably anticipated fees and costs. In the absence of such declaration, no award in excess of \$2,500.00 for fees and costs will be made. (Effective January, 1999)

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## **RULE 31.15      PHOTOCOPIES IN COURT FILE**

If photocopies of forms adopted by the Judicial Council are illegible or the reverse side is photocopied upside down, they may not be accepted as original documents for filing. (Effective January, 1999)

## **RULE 31.16      HEARING OFFICER'S SIGNATURE**

A. All proposed orders requesting the hearing officer's signature shall be delivered to the Clerk's office.

B. All requests for a hearing requiring a hearing officer's signature to be calendared shall be delivered to the Clerk's office. (Effective January, 1999)

## **RULE 31.17      PREPARATION OF ORDER AFTER HEARING**

A. Unless the court orders otherwise or prepares the Order After Hearing on its own, the moving party shall prepare a written order following any hearing on the law and motion calendar.

B. The preparing party shall mail the proposed order to the responding party for approval within ten (10) calendar days following the hearing. The responding party, within ten (10) calendar days after mailing, shall approve or refuse to approve the order and state alternate language.

C. If the preparing party does not receive a response within ten (10) days from the date of mailing of the proposed order, the preparing party shall mail a second letter to the respondent party.

The second letter shall notify the responding party that in five (5) days the proposed order will be submitted to the hearing officer, together with a copy of the second letter, for signature and filing with the court, without further notice to the responding party.

D. If there is a disagreement, each party shall submit to the court a proposed order with a cover letter delineating the areas of discrepancy. The court will make a ruling after a review of the appropriate record.

E. After an order has been signed by the hearing officer and filed, the party preparing the order shall serve a conformed filed copy on the opposing party. In addition, if applicable, a copy shall be served on the Family Support Division and/or Family Court Services within fifteen (15) days after filing. Service on the Family Support Division and/or Family Court Services shall be reflected on the proof of service.

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F. If the preparing party does not prepare an Order After Hearing within ten (10) days of the hearing and does not communicate the reason for the delay to the opposing party, then the opposing party may prepare the order and process it pursuant to B and C above. Failure to prepare the Order After Hearing as ordered may result in attorney fees and/or sanctions.

G. In all cases where the court does not prepare its own Order After Hearing, the parties may be directed to complete pre-printed Order After Hearing forms prior to leaving the courthouse. The pre-printed Order After Hearing forms shall be signed by both parties and, if represented, their attorneys of record.

H. If any party obtains a temporary or permanent restraining order based upon allegations of violence, that party shall personally serve a true and **complete** copy of the restraining order on FSD at 2200 Tulare Street, Suite 130P, Fresno, California. (42 United States Code § 654 (26) (B)(C)). **Service by mail is not acceptable.** If a temporary order is not converted into a permanent order, or a permanent order is vacated, FSD shall be notified in writing at the above address. Any correspondence directed to FSD shall include the **name of the case and the case number**. (Effective July, 1999)

### **RULE 31.18                    SIGNATURES ON STIPULATIONS**

A. Stipulations shall be signed by each of the parties and their respective attorneys.

B. Exceptions.

1. Only the attorneys need to sign a stipulation to continue a hearing except an OSC re: contempt (see Rule 31.9 (C)).

2. Only the attorneys need to sign a stipulation which was rendered in open court in the presence of the parties.

3. For good cause shown, the court may accept a stipulation signed only by the attorneys. (Effective January, 1999)

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# FRESNO COUNTY SUPERIOR COURT

## **RULE 32: JUDGMENTS OF DISSOLUTION**

### **RULE 32.1            REQUIREMENTS**

A.     **EVERY JUDGMENT SUBMITTED TO THE COURT MUST HAVE THE CASE NAME, CASE NUMBER, AND PAGE NUMBER CLEARLY SET FORTH.** All judgments involving children are cleared by FSD to verify the payment (or lack thereof) of public assistance on behalf of the minor children.

B.     Any party requesting a default judgment shall submit to the court a copy of any existing child support order. For any children not included in an existing child support order, and if neither party is receiving or is likely to receive public assistance, see Rule 32.2(F)(3)(c).

C.     If either party is receiving, or is likely to receive public assistance, or if the Family Support Division is enforcing or has enforced child support, or if there is an existing child support order through the District Attorney's Office, Family Support Division, the following language **SHALL** appear in the judgment:

1.     Petitioner/Respondent shall pay child support for (name of child) in the sum of \$\_\_\_\_\_per month, and for (name of child) in the sum of \$\_\_\_\_\_per month, for a total of \$\_\_\_\_\_per month commencing (date), and continuing on the \_\_\_\_\_ day of each and every month thereafter until the child marries, dies, becomes self-supporting, becomes an active member of the armed services, reaches the age of 19, or reaches the age of 18 and is no longer a full-time high school student, or until further order of the court, whichever occurs first.

2.     Petitioner/Respondent shall pay \$\_\_\_\_\_ [if known or if any] per month as and for child support arrearages, commencing (date), and continuing on the first day of each and every month thereafter until further order of the court.

3.     Interest shall accrue on the entire principal balance owing and not on each installment as it becomes due. This is not an installment judgment.

4.     No provision of this judgment shall operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.

5.     Support shall be paid to the Fresno County District Attorney Family Support Division, P. O. Box 12946, Fresno, CA 93779-2946.

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6. The Fresno County District Attorney Family Support Division shall enforce all payments.

7. A Wage and Earnings Assignment Order shall issue for ongoing support and arrearages.

8. Petitioner/Respondent shall:

a. Provide and maintain health insurance coverage for the child(ren) if it is available through employment, a group plan, or otherwise available at no or reasonable cost, and shall keep the District Attorney's office informed of the availability of the coverage;

b. If health insurance is not available, provide coverage when it becomes available;

c. Within 20 days of the District Attorney's request, complete and return a health insurance form;

d. Provide to the District Attorney all information and forms necessary to obtain health care services for the child(ren);

e. Present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health care services for the child(ren).

9. Unreimbursed medical, drug, dental, orthodontic, and vision expenses shall be shared equally (one-half each) by the Petitioner and Respondent, and the parties shall comply with the provisions of Family Code Section 4063 regarding payment and reimbursement of the unreimbursed costs.

10. A Health Insurance Coverage Assignment shall issue.

11. Petitioner/Respondent shall provide written notification to the Clerk of any change in residence and to the office of the District Attorney of any change of residence, income, or employment within 10 days.

D. When a judgment is requested *nunc pro tunc*, the party shall submit a declaration setting forth the requested date and the facts and reasons which justify the entry of a *nunc pro tunc* order. Family Code § 2346.

E. A proof of service of the Preliminary Declaration of Disclosure and a proof of service of the Final Declaration of Disclosure or a Waiver of Final Declaration of Disclosure pursuant to Family Code § 2105 must be included. (Effective January, 2000)

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## **RULE 32.2                    DEFAULT AND NO AGREEMENT**

The following forms and declarations must be submitted where applicable:

A. Declaration for Default or Uncontested Dissolution. Family Code § 2336.

**A supplemental declaration must be submitted addressing each applicable issue in the order listed below.**

1. Child custody and visitation.

a. Current child custody and visitation pattern.

b. Proposed custody and visitation plan with the reasons enumerated, including the percentage of time spent with the non-custodial parent.

2. Child Support.

Gross earnings (or, if unknown, an estimate of gross income and facts setting forth ability to earn) of both parties, and their tax filing status.

3. Spousal support.

Factors supporting the provisions set forth in Family Code § 4320.

4. Division of assets and liabilities.

a. If real property is included in the judgment, the common identification as well as the legal description must be included.

b. All automobiles, motor homes, trailers, motorcycles, and other vehicles must be identified by the Vehicle Identification Number (VIN#) and license number.

c. All boats must be identified by their "CF" number and VIN#.

d. All aircraft must be identified by their "N" number and VIN#.

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### 5. Attorney fees and costs.

An itemized declaration of work performed and costs incurred must be submitted.

B. A completed Judicial Council form 1295.05 Declaration Regarding Service of Final Declaration of Disclosure or a declaration waiving the requirement pursuant to Family Code § 2110.

C. A completed current UCCJA statement if there are minor child(ren). (Form available from the Clerk's Office.)

### D. Income and Expense Declaration

If child support, spousal support, family support or attorney's fees are an issue, a current (less than ninety (90) days old) Income and Expense Declaration must be completed, including the respondent's income, or a fair estimate thereof, as well as his or her occupation.

1. Wage earners shall attach the three most recent months of pay stubs for all jobs and the most recent W-2 and/or 1099 to all Income and Expense Declarations.

2. Self-employed individuals shall attach copies of their Federal Income Tax Schedule C for the last two (2) years and profit and loss statements for the current year to all Income and Expense Declarations.

3. If a party is unemployed, he or she shall submit documentation and a supporting declaration which **shall** contain the following:

- a. The date the party became unemployed and the reason therefor;
- b. The date unemployment benefits began;
- c. The monthly amount of unemployment benefits;
- d. The duration of unemployment benefits being received;
- e. The anticipated length of unemployment; and
- f. Whether or not the obligor parent has applied for benefits.

4. If a party is disabled, he or she shall submit documentation and a supporting declaration which **shall** contain the following:

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- a. The date the party became disabled;
  - b. The type of disability benefit(s) received;
  - c. The monthly amount of disability payments;
  - d. The duration of disability benefits being received;
  - e. The nature of the disability;
  - f. The anticipated length of the disability; and
  - g. Whether or not the obligor parent has applied for benefits for the children.
5. If a party is receiving retirement benefits, he or she shall submit documentation and a supporting declaration which **shall** contain the following:
  - a. Date of retirement;
  - b. Type(s) of retirement benefit(s) received; and
  - c. Amount party is receiving from each benefit.
6. If a respondent's income is unknown, the following must be submitted:
  - a. Facts relating to prior employment for the previous four years;
    - 1) Name of employer(s);
    - 2) Position(s) held;
    - 3) Duration of employment;
    - 4) Earnings; and
    - 5) Reasons for termination of each employment.
  - b. Employment Skills;
  - c. Education and degrees; and
  - d. Licenses held.

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7. If a respondent is incarcerated this fact shall be set forth by attached declaration which shall include the place of incarceration and expected date of release, if known.

### E. Property Declaration

1. If the proposed division is not equal according to the net values in dollars (which must be set forth), the proposed method of equalization must be set forth in the proposed Judgment and explained in the Family Code § 2336 declaration.

2. All real property listed shall be described by its common address and its legal description, which may be by a referenced attached exhibit.

3. A proof of service of the Final Declaration of Disclosure from the moving party or checking 5B4 of the Declaration of Default - Uncontested must be included.

### F. Judgment

1. In item 1., the second box should be checked, "by declaration."

2. The date for termination of status should be left blank unless a specific date in the future is requested.

3. Attachment 4.n. to the Judgment shall be in proper court pleading form and contain provisions for the following where applicable:

a. Reference to an attached pre-existing order regarding child custody or visitation from Family Court Services and which is to be incorporated may be set forth as follows:

There is attached hereto and made a part hereof, labeled as Exhibit \_\_\_\_, a certified copy of the report and recommendation from Family Court Services, signed by the court on (date) and filed (date). This attachment consisting of (number) pages is incorporated and merged into and made a part of this Judgment as though fully set forth herein.

b. Legal and physical child custody and visitation (including the name(s) and date of birth of the child(ren)).

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c. Non District Attorney Cases-Child support, child care, health insurance, and uncovered unreimbursed health care costs of the minor child(ren), attach Judicial Council forms 1296.31B, 1296.31B(1), and 1296.31B(2), as applicable. This paragraph applies to children for whom public assistance is not being received, and for whom the Family Support Division is not enforcing and has not enforced child support.

d. District Attorney Cases-For children of the parties for whom public assistance is being received or is likely to be received and/or enforcement services are being or have been provided by the Family Support Division, see Rule 32.1.

G. Notice of Entry of Judgment with two (2) stamped addressed envelopes. The addresses in the boxes on the Notice of Entry of Judgment must be the same as the addresses on the envelopes. The submitted envelopes shall bear sufficient postage and shall be addressed to each party, with the address of the Clerk as the return address. (Effective January, 2000)

### **RULE 32.3            DEFAULT WITH MARITAL SETTLEMENT AGREEMENT (MSA)**

The following forms must be submitted where applicable:

A. Declaration for Default or Uncontested Dissolution Family Code § 2336.

B. Judicial Council form 1292.05 -- Declaration Regarding Service of Final Declaration of Disclosure, or in the alternative a Family Code § 2105 Waiver form.

C. Judgment.

1. In item 1., the second box should be checked, "by declaration under Family Code § 2336."

2. The date for termination of status should be left blank unless a specific date in the future is requested.

3. Attachment 4.n. to the Judgment shall contain provisions for the following where applicable:

a. Reference to an attached pre-existing order regarding child custody or visitation from Family Court Services or a child support order from Family Support Division which is less than one year old and which is to be incorporated may be set forth as follows:

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"There is attached hereto and made a part hereof, labeled as Exhibit \_\_\_\_, a certified copy of the report and recommendation from (Family Court Services) (Family Support Division), signed by the court on (date) and filed (date). This attachment consisting of (number) pages is incorporated and merged into and made a part of this Judgment as though fully set forth herein."

b. Legal and physical child custody and visitation (including the name(s) and date of birth of the child(ren)).

c. Child support, child care, health insurance, and uncovered unreimbursed health care costs of the minor child(ren).

1) Non District Attorney Cases-Child support, health insurance, and uncovered unreimbursed health care costs of the minor child(ren), attach Judicial Council forms 1296.31B, 1296.31B(1), and 1296.31B(2), as applicable. This paragraph applies to children for whom public assistance is not being received and is not likely to be received, and for whom the Family Support Division is not enforcing and has not enforced child support.

2) District Attorney Cases-For children of parties for whom public assistance is being or is likely to be received and/or enforcement services are being or have been provided by the Family Support Division, see Rule 32.1.

d. Spousal support.

e. Attorney fees.

f. The signature of the spouse who has defaulted on any MSA or any Stipulated Judgment shall be notarized.

g. Incorporation of Marital Settlement Agreement.

The following is an example of language for the Judgment that may be used to incorporate an MSA by reference. (Optional language is in parentheses):

There is attached hereto, and labeled Exhibit A, an original Marital Settlement Agreement signed by both parties, consisting of \_\_\_\_\_ pages (plus \_\_\_\_\_ pages of exhibits attached thereto). The Marital Settlement Agreement is incorporated and merged into this Judgment as though fully set forth herein. The parties are ordered to comply with each and



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every executory provision in the Marital Settlement Agreement. (The court reserves jurisdiction to: enforce and administer the executory provisions of the Marital Settlement Agreement, to award attorney's fees and costs to the prevailing party in any action to enforce the provisions thereof, to join any person that may be joined according to law, to value and divide equally between the parties any community assets and obligations not mentioned in Exhibit A.).

4. All real property listed in the MSA shall be described by its common address and its legal description, which may be by a referenced attached exhibit.

5. All automobiles, motor homes, motorcycles, trailers and other vehicles must be identified by the Vehicle Identification Number (VIN#) and license plate number.

6. All boats must be identified by their "CF" number and VIN number.

7. All aircraft must be identified by their "N" number and VIN number.

8. The language in the Judicial Council Form entitled "Declaration Re Unrepresented Party" may either be set forth in the MSA (under an appropriate heading) or the form may be attached as an exhibit and incorporated in the MSA.

9. Minimum child support waiver language (Family Code § 4065) shall be included in the MSA or a waiver may be attached as an exhibit and incorporated in the MSA.

10. When a party is represented by counsel, the signature of the attorney who did not prepare the Judgment/MSA shall appear on the Judgment (Attachment 3.g.) to show approval as to form and content.

D. Notice of Entry of Judgment with two (2) stamped addressed envelopes. The addresses in the boxes on the Notice of Entry of Judgment must be the same as the addresses on the envelopes. The submitted envelopes shall bear sufficient postage and shall be addressed to each party, with the address of the Clerk as the return address. (Effective January, 2000)

### **RULE 32.4**

### **APPEARANCE BY RESPONDENT AND MARITAL SETTLEMENT AGREEMENT PURSUANT TO FAMILY CODE § 2336**

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The following forms must be submitted where applicable:

A. Declaration for Uncontested Dissolution Family Code § 2336.

B. Appearance.

1. Response.

2. Appearance, Stipulation and Waivers form. The boxes containing the following language must be checked:

a. The parties stipulate that this cause may be tried as an uncontested matter.

b. The parties waive their rights to notice of trial, findings of fact and conclusions of law, motion for new trial, and the right to appeal.

C. Waivers.

1. In MSA; and

2. Appearance, Stipulation and Waivers form.

D. Judicial Council form 1292.05 -- Declaration Regarding Service of Final Declaration of Disclosure, or in the alternative a Family Code § 2105 Waiver form.

E. Judgment.

1. In item 1., the second box should be checked, "by declaration under Family Code § 2336."

2. The date for termination of status should be left blank unless a specific date in the future is requested.

3. Attachment 4.n. to the Judgment shall contain provisions for the following where applicable:

a. Reference to an attached pre-existing order regarding child custody or visitation from Family Court Services or a child support order from Family Support Division which is less than one year old and which is to be incorporated may be set forth as follows:

There is attached hereto and made a part hereof, labeled as Exhibit \_\_\_\_\_, a certified copy of the report and recommendation from

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(Family Court Services) (Family Support Division), signed by the court on (date) and filed (date). This attachment consisting of (number) pages is incorporated and merged into and made a part of this Judgment as though fully set forth herein.

b. Legal and physical child custody and visitation (including the name(s) and date of birth of the child(ren)).

c. Child support, child care, health insurance, and uncovered unreimbursed health care costs of the minor child(ren).

1) Non District Attorney Cases-Child support, health insurance, and uncovered unreimbursed health care costs of the minor child(ren), attach Judicial Council forms 1296.31B, 1296.31B(1), and 1296.31B(2), as applicable. This paragraph applies to children for whom public assistance is not being received and is not likely to be received, and for whom the Family Support Division is not enforcing and has not enforced child support.

2) District Attorney Cases-For children of parties for whom public assistance is being or is likely to be received and/or enforcement services are being or have been provided by the Family Support Division, see Rule 32.1.

d. Spousal support.

e. Attorney fees.

f. Incorporation of MSA.

The following is an example of language for the Judgment that may be used to incorporate an MSA by reference. (Optional language is in parentheses):

There is attached hereto, and labeled Exhibit A, an original Marital Settlement Agreement signed by both parties, consisting of \_\_\_\_\_ pages (plus \_\_\_\_ pages of exhibits attached thereto). The Marital Settlement Agreement is incorporated and merged into this Judgment as though fully set forth herein. The parties are ordered to comply with each and every executory provision in the Marital Settlement Agreement. (The court reserves jurisdiction to: enforce and administer the executory provisions of the Marital Settlement Agreement, to award attorney's fees and costs to the prevailing party in any action to enforce the provisions thereof, to join any person that may be

## FRESNO COUNTY SUPERIOR COURT

joined according to law, to value and divide equally between the parties any community assets and obligations not mentioned in Exhibit A.)

4. All real property listed in the MSA shall be described by its common address and its legal description, which may be by a referenced attached exhibit.

5. All automobiles, motor homes, motorcycles, trailers and other vehicles must be identified by the Vehicle Identification Number (VIN#) and license plate number.

6. All boats must be identified by their "CF" number and VIN number.

7. All aircraft must be identified by their "N" number and VIN number.

8. Language in the Judicial Council Form entitled "Declaration Re Unrepresented Party" may either be set forth in the MSA (under an appropriate heading) or the form may be attached as an exhibit and incorporated in the MSA.

9. Minimum child support waiver language (Family Code § 4065) shall be included in the MSA or a waiver may be attached as an exhibit and incorporated in the MSA.

10. When a party is represented by counsel, the signature of the attorney who did not prepare the Judgment/MSA shall appear on the Judgment (Attachment 3.g.) to show approval as to form and content.

F. Notice of Entry of Judgment with two (2) stamped addressed envelopes. The addresses in the boxes on the Notice of Entry of Judgment must be the same as the addresses on the envelopes. The submitted envelopes shall bear sufficient postage and shall be addressed to each party, with the address of the Clerk as the return address. (Effective January, 2000)

### **RULE 32.5**

### **APPEARANCE BY RESPONDENT AND THE UNCONTESTED JUDGMENT IS ENTERED IN COURT**

The following form must be submitted:

A. Judgment.

1. In paragraph 1 the first box should be checked, "default or uncontested," and the rest of paragraph 1 should be completed.

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2. A Family Code § 4065 Waiver form shall be included in the Judgment.

3. If the party who did not prepare the Judgment is represented by an attorney, a signature line for counsel should appear on the attachment to the Judgment, after the hearing officer's signature, and after the words "Approved as conforming to form and content." The party preparing the Judgment does not sign it.

4. The applicable waivers should be included in the body of the Judgment rather than on the form, Appearance, Stipulation and Waivers.

5. The Judgment shall be submitted as recited in open court. If the parties later wish to modify the Judgment before being signed by the court, they must also submit a stipulation and order for modification along with the Judgment.

B. Judicial Council form 1292.05 -- Declaration Regarding Service of Final Declaration of Disclosure, or in the alternative a Family Code § 2105 Waiver form.

C. Notice of Entry of Judgment with two (2) stamped addressed envelopes. The addresses in the boxes on the Notice of Entry of Judgment must be the same as the addresses on the envelopes. The submitted envelopes shall bear sufficient postage and shall be addressed to each party, with the address of the Clerk as the return address. (Effective July, 1998)

### **RULE 32.6                    JUDGMENT AFTER TRIAL**

A. A Judgment incorporating all of the court's rulings shall be prepared and submitted by the party so ordered. The party preparing the Judgment shall provide a signature line on the Judgment after the hearing officer's signature and after the words, "Approved as conforming to court order."

B. On the Judicial Council Judgment form, paragraph 1 must be completed in its entirety and the 3rd box should be checked "contested."

1. The preparing party shall mail the proposed Judgment to the responding party for approval within ten (10) calendar days following the hearing. The responding party, within ten (10) calendar days after mailing, shall approve or refuse to approve the Judgment and state alternate language.

2. If the preparing party does not receive a response within ten (10) days from the date of mailing of the proposed Judgment, the preparing party shall mail a second letter to the responding party. The second letter

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shall notify the responding party that in five (5) days the proposed Judgment will be submitted to the hearing officer, together with a copy of the second letter, for signature and filing with the court, without further notice to the responding party.

3. If the preparing party does not prepare Judgment within ten (10) days of the trial and does not communicate the reason for the delay to the opposing party, then the opposing party may prepare the Judgment and process it pursuant to this rule. Failure to prepare the Judgment as ordered may result in attorney fees and/or sanctions.

4. After the Judgment has been signed by the judge and filed, the party preparing the Judgment shall mail a conformed filed copy to the opposing attorney or to a party appearing in pro per. In addition, if applicable, a copy shall be mailed to the Family Support Division and/or Family Court Services.

C. Notice of Entry of Judgment with two (2) stamped addressed envelopes. The addresses in the boxes on the Notice of Entry of Judgment must be the same as the addresses on the envelopes. The submitted envelopes shall bear sufficient postage and shall be addressed to each party, with the address of the Clerk as the return address. (Effective July, 1998)

### **RULE 32.7                    BIFURCATED JUDGMENT/STATUS ONLY**

A. A bifurcation of marital status will not be granted unless a preliminary Declaration of Disclosure with a completed Schedule of Assets and Debts, completed Income and Expense Declaration, and other required attachments, if any, are served on the non-moving party with the OSC/NOM, unless they have been previously served:

A bifurcation may be obtained by one of the following:

1. Stipulation and order for bifurcation with the following documents submitted:

a. Appearance, Stipulation and Waiver form. The boxes containing the following language must be checked:

1) The parties stipulate that this cause may be tried as an uncontested matter.

2) The parties waive their rights to notice of trial, findings of fact and conclusions of law, motion for new trial, and the right to appeal.

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b. Judgment indicating "status only" with box "3. f" checked.

c. Notice of Entry of Judgment indicating "status only" checked, together with two (2) addressed stamped envelopes. The addresses in the boxes on the Notice of Entry of Judgment must be the same as the addresses on the envelopes. The submitted envelopes shall bear sufficient postage and shall be addressed to each party, with the address of the Clerk as the return address.

### 2. Default--No Appearance

The following forms must be submitted:

a. Declaration for Default or Uncontested Dissolution, Family Code § 2336;

b. Judgment indicating "status only" with box "3. f" checked;

c. Notice of Entry of Judgment indicating "status only" checked, together with two (2) addressed stamped envelopes. The addresses in the boxes on the Notice of Entry of Judgment must be the same as the addresses on the envelopes. The submitted envelopes shall bear sufficient postage and shall be addressed to each party, with the address of the Clerk as the return address.

### 3. Notice of Motion.

The following forms must be submitted:

a. Judgment indicating "status only" with box "3. f" checked; and

b. Notice of Entry of Judgment indicating "status only" checked, together with two (2) addressed stamped envelopes. The addresses in the boxes on the Notice of Entry of Judgment must be the same as the addresses on the envelopes. The submitted envelopes shall bear sufficient postage and shall be addressed to each party, with the address of the Clerk as the return address.

B. If pendente lite orders were issued, the Judgment shall state that such orders shall continue in full force and effect until further order of the court.

C. Only one (1) Judgment can be granted. Any further court order shall be captioned Orders on Reserved Issues or Order on Reserved Issues After Trial not as an additional Judgment.

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D. Judicial Council form 1292.05 -- Declaration Regarding Service of Final Declaration of Disclosure, or in the alternative a Family Code § 2105 Waiver form.

E. If the parties are unable to settle the reserved issues, either party may file an at issue memorandum to obtain a settlement conference date. (Effective January 2000)



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## **RULE 33: CHILD SUPPORT**

### **RULE 33.1      MINIMUM CHILD SUPPORT WAIVER**

All stipulations regarding child support, except where either of the parties or children is receiving public assistance, shall include a signed Family Code § 4065 Waiver. (Effective July, 1998)

### **RULE 33.2      INCOME AND EXPENSE DECLARATIONS/FINANCIAL STATEMENTS**

#### A.      Income and Expense Declaration/Financial Statements.

If child support, spousal support, family support or attorney's fees are an issue, a current (less than ninety (90) days old) Income and Expense Declaration must be completed, including the other party's income, or a fair estimate thereof, as well as his or her occupation. If only child support is at issue, then the Financial Statement (Simplified) Judicial Council form 1285.52 may be substituted for an Income and Expense Declaration.

1.      Wage earners shall attach the three (3) most recent months of pay stubs for all jobs and the most recent W-2 and/or 1099 to all Income and Expense Declarations/Financial Statements.

2.      Self-employed individuals shall attach copies of their Federal Income Tax Schedule C for the last two (2) years and profit and loss statements for the current year to all Income and Expense Declarations/Financial Statement.

3.      If the other party's income is unknown, the following must be submitted if known:

#### a.      Facts relating to prior employment:

- 1)      Name of employer
- 2)      Position(s) held
- 3)      Duration of employment
- 4)      Earnings
- 5)      Reasons for termination of each employment

#### b.      Employment Skills

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- c. Education and degrees
- d. Licenses held
- e. Age
- f. Health
- g. Other supported children, if known

4. If a party is disabled, he or she shall submit documentation and a supporting declaration which **shall** contain the following:

- a. The type of disability benefit(s) received
- b. The monthly amount of disability payments
- c. The duration of disability benefits being received
- d. The nature of the disability
- e. The anticipated length of the disability
- f. Whether or not the obligor parent has applied for benefits for the children.

5. If a party is receiving retirement benefits, that party shall submit documentation and a supporting declaration which **shall** contain the following:

- a. Type(s) of retirement benefit(s) received
- b. Amount party is receiving from each benefit

6. If a party is incarcerated this fact shall be set forth by attached declaration which shall include the place of incarceration and expected date of release, if known.

B. The failure to complete the Income and Expense Declaration may result in the court applying one or more of the remedies set forth in Rule 30.1.

C. The following items **SHALL** be served on the other party but are **NOT TO BE FILED WITH THE COURT**:

1. Tax returns including all schedules and K-1 attachments for the immediately preceding three (3) years (both State and Federal)

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2. Copies of all other records reflecting income, whether the income has been received or not, since the last tax return. This includes Internal Revenue W-2 forms and 1099 forms.

If these documents are not available (for example, they are in the possession and control of the other party), a declaration under penalty of perjury shall state that fact, and the party without the documents shall prepare and serve the request or notice to produce the documents to the appropriate person or agency. (Effective July, 1998)

### **RULE 33.3                    COMPUTER APPLICATION**

In all law and motion matters, or Family Code § 2336 applications for orders, when child support is at issue, a computer printout may be used to set forth the amount of child support calculated pursuant to the Statewide Guideline for the Uniform Determination of Child Support. If the DissoMaster™ is used, then printouts of the following shall be submitted:

1. DissoMaster™ Settings screens
2. WhatIf™ screen
3. Findings Screen

If the printout from any other computer program is used, documentation shall be submitted which shows how net incomes were derived.

If a party contends that the scheduled amount of child support is not proper, then further declarations should set forth the proper amount and the reasons for any requested difference. (Effective July, 1994)

### **RULE 33.4                    NOTIFYING THE DISTRICT ATTORNEY OF CHANGE OF CUSTODY**

In all cases where the District Attorney Family Support Division is enforcing a child support order and there is a change of custody, a copy of the new order shall be mailed to the District Attorney Family Support Division within ten (10) days of filing. (Effective July, 1992)

### **RULE 33.5                    CHILD SUPPORT AND THE DISTRICT ATTORNEY FAMILY SUPPORT DIVISION**

A. All written stipulations, orders, and Judgments which provide for child support are cleared by FSD to verify whether or not public assistance is being received.

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B. A conformed filed copy of ALL orders (welfare/non-welfare) involving the District Attorney Family Support Division shall be mailed by the party to the District Attorney Family Support Division, P. O. Box 12946, Fresno, CA 93779 within ten (10) days of the filing of the order.

C. In any case before the court, the parties shall inform the judge if the FSD, or is likely to be, involved.

D. If either party is receiving, or is likely to receive public assistance, the following language shall appear in ALL orders:

1. Petitioner/Respondent shall pay child support for (name of child) in the sum of \$\_\_\_\_\_per month, and for (name of child) in the sum of \$\_\_\_\_\_per month, for a total of \$\_\_\_\_\_per month beginning \_\_\_\_\_ and continuing on the first day of each and every month thereafter until the child dies, is married, is emancipated, becomes an active member of the armed services or further order of the court, or as to an unmarried child who has attained the age of 18 years, is a full-time high school student, and who is not self-supporting, until the time the child completes the 12th grade, or attains the age of 19 years, whichever occurs first. (Effective July, 1998)

2. If either party or the District Attorney desires a judicial review of this child support order, a Notice of Motion must be filed with the court within 180 days of the date of this order. All rights to retroactive adjustment are reserved.

3. Support shall be paid to the District Attorney Family Support Division, P. O. Box 12946, Fresno, CA 93779-2946.

4. The District Attorney Family Support Division shall enforce all payments.

5. An Order Assigning Wages (Wage Assignment) shall issue for ongoing support and arrearages.

6. Health insurance shall be maintained by either or both parties if insurance is available through his or her employment at reasonable cost. An Application and Order for Health Insurance Coverage shall issue and both parties shall be ordered to complete a DHS 6110 form and return the same to the Fresno County District Attorney Family Support Division within twenty (20) calendar days of the filing of this order. Unreimbursed medical, drug, dental, orthodontic and vision expenses shall be shared in the ratio of (\_\_\_\_)% to Petitioner and the balance to the Respondent.

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E. For billing purposes, orders prepared by FSD will classify a party's contributive share of child care expenses as "child support".

F. FSD will not reduce unpaid medical bills incurred by the minor children of the parties to a fixed dollar judgment but may enforce unpaid medical bills after they have been reduced to a fixed dollar amount. (Effective July, 1998)

### **RULE 33.6                    MOTIONS TO DETERMINE ARREARS ON FSD CASES**

A. The court encourages parties to meet and confer with the Family Support Division before filing a motion to determine arrears. If the issues cannot be resolved, the moving papers shall specify the nature and amount of the dispute, and shall identify, if possible, the specific errors in FSD calculations.

B. The party shall serve the Family Support Division with the moving papers and shall then personally contact the FSD at least ten (10) working days before the hearing in an attempt to resolve or limit the issues.

C. All parties shall comply with the provisions of Welfare & Institutions Code § 11350.8(c). (Effective July, 1998)

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## **RULE 34: CHILD CUSTODY, VISITATION AND MEDIATION**

### **RULE 34.1            MEDIATION**

A.     **Purpose of Mediation.** The purpose of the mediation proceeding is:

1.     To reduce acrimony which may exist between the parties;
2.     To develop a custody/visitation plan which assures the minor child(ren) of close and continuing contact with both parents which is in their best interests;
3.     Mediation shall occur before a Family Assessment or a Custody Investigation;

B.     **Mandatory Mediation re: Child Custody and Visitation.** All contested custody and visitation matters shall be scheduled for mediation through Family Court Services or a private mediator.

The mediator shall use his or her best efforts to settle the custody or visitation dispute in accordance with Family Code §§ 3100, 3161, and 3179.

C.     **Proceedings.** Mediation and family assessments shall be held in private between the mediator, the parties and/or the children. Attorneys shall not participate in mediation. (Effective July, 1999)

### **RULE 34.2            CHILD CUSTODY AND VISITATION MEDIATION (FAMILY CODE §§ 3000 - 3192, 3011)**

A.     **Definitions**

1.     **Mediation:** Mediation may be provided free of charge in one of three settings:

a.     **Pre-Court Mediation:** Mediation which takes place before the custody/visitation law and motion hearing.

b.     **At-Court Mediation:** Mediation which takes place at the same time as the custody/visitation law and motion hearing.

1)     Where either party contacted Family Court Services for pre-court mediation at the time the motion was filed, but was unable to obtain mediation;

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2) Where one of the parties lives beyond a 250 mile radius of the Fresno County Courthouse;

3) At the discretion of the hearing officer.

c. Post-Court Mediation: Mediation which takes place after the initial custody/visitation law and motion hearing.

2. **Family Assessment**. Extended interview with all parties and children and any additional contacts deemed necessary by the court to evaluate allegations made by the parties/children during mediation. A fee will be charged for a family assessment.

3. **Custody Investigation**: In depth investigation involving interviews with all parties and children, collateral witnesses, and/or home studies which may only be ordered by the court in the event a family assessment is not successful. A fee will be charged for a custody investigation. A substantial deposit may be required when the court orders custody investigation. (Effective July, 1998)

4. **Psychological Evaluation**. In depth investigation involving interviews with all parties, children, and collateral witnesses and psychological testing by a licensed psychologist as approved by Family Court Services.

a. All psychological evaluations that are part of the Family Assessment or the Custody Investigation shall be completed within ninety (90) days of the court order. In the event a psychological evaluation is not completed within the ninety (90) day period, the referral by Family Court Services shall be terminated and the current orders regarding custody and visitation shall remain in full force and effect until further order of the court.

b. If Family Court Services receives a psychological evaluation where one party participates and the other party does not complete the psychological evaluation, Family Court Services may consider the completed portion of the psychological evaluation. (Effective July, 1999)

### RULE 34.3

### **FEES FOR SERVICES**

A. There will be a fee for all services provided by Family Court Services, except for mediation. Mediation is limited to no more than two (2) hours of the mediator's time, including the time utilized to generate the recommendation. The fees have been approved by the Superior Court and adopted by the Fresno County Board of Supervisors.



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B. When the Court orders a Family Assessment/Custody Investigation, the parties shall complete all FCS Financial Declaration forms for waiver of fees or submit deposits to FCS within five (5) days of receipt of the Court's order.

C. The parties shall be charged for a Family Assessment/Custody Investigation consistent with their ability to pay. Both parties shall be referred to a FCS or private evaluator contracted to do evaluations for FCS. In the event a private evaluator is assigned to the case, the parties shall share equally in the costs of the evaluation which shall be paid directly to the evaluator, unless otherwise directed by the court. The costs of the Family Assessment/Custody Investigation shall be subject to reallocation by the court at a later date. (Effective July, 1998)

### **RULE 34.4                    ORDERS TO SHOW CAUSE/NOTICES OF MOTION**

**In all Orders to Show Cause and Notices of Motion where custody or visitation is a contested issue, the parties shall attend mediation through Family Court Services or a private mediator prior to the court hearing. If the parties elect to go to Family Court Services, the parties shall attend orientation and mediation prior to the court hearing. Failure to comply with this requirement or to keep scheduled appointments may result in the imposition of sanctions as set forth in Rule 30.1.**

A. **Attendance at Orientation and Mediation.** All parties shall personally attend the orientation and mediation.

1. Parties who reside outside a 250 mile radius of the Fresno County Courthouse, Central Division, may be excused from attending orientation with advance, written notice to Family Court Services, 2220 Tulare Street, Suite 1111, Fresno, California 93721.

2. In the event one of the parties resides beyond a 250 mile radius of the Fresno County Courthouse, Central Division, the parties may request mediation concurrent with the time of the hearing.

3. Telephone mediation may occur when either party resides out-of-state, or will suffer an extreme hardship by traveling to FCS for mediation, or by court order, or with good cause, at the discretion of FCS. The request for telephone mediation shall be made in advance of mediation.

4. If a case has not been mediated at the time of the hearing, the court may continue the case and refer the matter to Family Court Services for mediation. The recommendation of FCS shall be submitted to the court.

5. **Failure to comply with these provisions may result in the imposition of sanctions as set forth in Rule 30.1.**

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B. **Obtaining Dates and Serving the Other Party.** The dates and times for Family Court Services' orientation and mediation will be assigned by the Calendar Clerk and shall be set forth on a completed Orientation and Mediation Court Referral form. The completed Orientation and Mediation Court Referral form shall be attached to and served with the moving papers. Service of the completed Orientation and Mediation Court Referral form shall be reflected on the proof of service.

In cases involving domestic violence with confidential information, the moving party shall complete two separate referral forms: one containing the moving party's residential information and the other containing the responding party's residential information. Both forms shall include the children's information. The moving party must serve only the copy containing the opposing party's residential information.

C. **Completion of Pre-Court Mediation.** The Family Court counselor shall submit a recommended parenting plan to the court. Copies of the recommendation shall be made available to the parties, at the Family Court Services Department, at least two (2) calendar days prior to the court hearing. If the recommended parenting plan is not available prior to the hearing, it shall be available in court at the time of the hearing.

D. **Completion of Post-Court Mediation.** The Family Court mediator's recommended parenting plan shall be submitted to the parties within sixty (60) days after the case has been assigned to a mediator.

E. **Completion of Family Assessment or Custody Investigation.** The Family Court investigator's recommended parenting plan shall be submitted to the parties within ninety (90) days after the case has been assigned to an investigator.

F. **Availability of Information.** Certain information will be attached to the court copy of the report and recommendation only. This information may include the following:

1. Minor's confidential statement;
2. Psychological reports;
3. Medical reports of the parties.

If the parties, or their counsel, wish to see any of the above listed information, the judge may make the requested information available to the parties or their counsel with appropriate protective orders, if necessary. (Family Code § 3042 (b).)

G. **New Mediation Referrals.** No mediation appointment may be made within six (6) months of an existing FCS recommendation except by court order.

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H. **Independent and/or Second Opinions.** Child(ren) shall not be taken by a party to a new evaluator/therapist for an independent or second opinion during the court process of a custody dispute except as ordered by the court. (Effective July, 1998)

I. **Cancellation or Rescheduling of Orientation, Mediation and Court Dates.** After a mediation appointment has been set, neither party may change the mediation appointment without first notifying the other party of the need for the change and obtaining alternate dates. All requests for cancellation or rescheduling of orientation, mediation or court dates must be handled exclusively through the Calendar Clerk, Family Law Division, at (559) 488-3446. (Effective July, 1999)

### **RULE 34.5                    CHILDREN'S ATTENDANCE AT MEDIATION**

All children over the age of five (5) shall be brought to the mediation. The child may be interviewed at the discretion of the mediator. (Effective July, 1998)

### **RULE 34.6                    CHILDREN AT COURT**

Minor child(ren) shall **NOT** be brought to the court hearing. In the event the child(ren) are required to be present in order to comply with Rule 34.5 above for at-court mediation, then the child(ren) shall be available to be transported to the court upon request. (Effective July, 1998)

### **RULE 34.7                    OBJECTIONS TO FAMILY COURT SERVICES REPORT AND RECOMMENDATION**

A. **Objections to Pre-Court or At-Court Mediation Recommendations.** Objections to the Family Court Services' Recommendations made on the record in open court shall be considered for purposes of an order for custody/visitation made at that court hearing. If, in the discretion of the court, the objection is **sufficiently serious** to require a further evidentiary hearing, the objecting party or parties shall have fifteen (15) days from the date of the court hearing to file a written objection to the recommended parenting plan of FCS. The objection shall be in compliance with the provisions set forth in Rule 34.7(B). If no objection is filed within fifteen (15) days from the date of the hearing, the recommended plan may become the order of the court without further hearing on the matter.

B. **Objections to Post-Court Mediation / Family Assessment / Custody Investigation Recommendations.** In the event one or both of the parties object to the recommendation of the mediator/investigator, the objecting party must **file** a written objection to the recommendation with the Clerk no later than twenty (20) days after the date of mailing or faxing or receipt of the hand delivered recommendation in court. (This twenty (20) day period includes time for mailing pursuant to the Code of Civil Procedure.) A copy of the written objection and all

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enclosures shall be mailed to the opposing party and FCS, and proof of service shall be filed with the court. If the twenty (20) day period expires without objection, the recommendation may be signed and filed as an order of the court. **FAXED OBJECTIONS WILL NOT BE ACCEPTED.**

Objections to the recommendations of Family Court Services shall be typewritten and shall be mailed to:

Fresno County Superior Court  
Attention: Family Law Examiner  
1100 Van Ness  
Fresno, California 93724-0002

If a timely objection is filed, the Calendar Clerk will set a date for a Mandatory Settlement Conference and notify each party by mail.

Objections to a Mediation/Investigation recommended parenting plan of Family Court Services **MUST BE TYPEWRITTEN** and **SHALL** set forth the following:

1. The case name **and** case number;
2. Each paragraph number in the recommendation to which the objection is made;
3. Proposed alternate language to each paragraph to which the party objects;
4. Reasons for the suggested change:
  - a. **The statement "It is in the best interest of the child(ren) to make the change" IS INSUFFICIENT.**
  - b. **Absent extraordinary circumstances, only those specific sections of the recommendation to which an objection is made may be considered by the court.**
5. A copy of the report being objected to **MUST BE ATTACHED.**
6. The objection must contain the name, address, and a telephone number (**not** a pager number) of the party and must be signed by the objecting party or the party's attorney.

C. **Amendment of Objections.** If the objection does not contain the required information as set forth in (B)(1)-(6) above, the court may reject and return the objection. The court shall notify the objecting party that the written objection is improper. The objecting party shall have ten (10) days from the date of mailing to

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amend the objection and forward it to the Clerk's office. If the objecting attorney/party fails to submit the amended objection within the time allowed, or fails to comply with the procedures the second time, the recommendation may be signed and filed as an order of the court.

D. **Effort to Settle Differences.** Prior to appearing in court at the initial Mandatory Settlement Conference, the parties and their respective attorneys shall meet at an Office Settlement Conference to attempt to settle the custody/visitation issues. Attendance at the Office Settlement Conference and the Mandatory Settlement Conference is MANDATORY. Failure to comply with this provision may result in the imposition of sanctions as set forth in Rule 30.1.

E. **Hearing Date.** If the custody/visitation issues are not resolved at the Mandatory Settlement Conference, then, at the court's sole discretion, the matter may be set for hearing. During the pendency of this hearing, no new mediation shall be calendared without court approval upon the showing of substantial and material changed circumstances.

F. **Psychological Evaluations.** In the event the temporary Family Court Services Report and Recommendation indicates that a psychological evaluation/family assessment/custody investigation be completed, any Mandatory Settlement Conference shall be set after the anticipated due date of the final Family Court Services Report and Recommendation, the termination of the order for the psychological evaluation or by order of the court. (Effective January, 2002)

### **RULE 34.8                    AVAILABILITY OF FAMILY COURT COUNSELORS FOR TESTIMONY**

A. The County of Fresno charges witness fees whenever a county employed mediator is subpoenaed to testify in a civil case. A charge of \$150.00 is authorized under Government Code § 68096.1.

B. To subpoena a mediator to appear, the following must be delivered to Family Court Services, as the authorized agent:

1. The original and one copy of the subpoena to appear;
2. A check in the amount of \$150.00 made payable to Family Court Services of Fresno County;

The mailing address for the mediation office is:

Fresno County Family Court Services  
2200 Tulare Street, Suite 1111  
Fresno, CA 93721

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C. The County of Fresno shall be reimbursed for expenses, such as salary and other compensation for the time a Fresno County employee serves as a witness. An hourly fee will be charged in all cases in which a Fresno County Mediator appears in court. Charges are assessed for time the mediator is on call and unable to attend to other duties.

Any unused monies will be returned to the depositing party. If expenses exceed the deposit, the difference shall be paid to Family Court Services.

D. If matters are taken off calendar, the FCS Mediator must immediately be informed.

E. Unless otherwise directed, FCS Mediators will be on call rather than personally present in Court.

F. In the event the matter is continued, the previously subpoenaed FCS mediator may be ordered back to the continued hearing date and shall be available at FCS on an "on call" basis. If the mediator is required to testify, the notification to appear at the continued hearing may be made by telephone. (Effective July, 1998)

### **RULE 34.9                    MATTERS OFF CALENDAR**

A. A hearing relating to child custody or visitation shall not be removed from calendar after mediation or evaluation without the consent of all parties. If the matter has been removed from the calendar in violation of this rule, the court may hear the matter as calendared or the matter may be submitted and the recommendation made an order of the court.

B. If the matter is taken off calendar or the objection is withdrawn, the FCS recommendation may be made an order of the court.

C. If there is a stipulation which resolves the issues, the stipulation and order shall be submitted for signature to the hearing officer prior to the hearing date. If this is not possible, the hearing date must be continued to a date certain so that the signed stipulation can be submitted to:

Fresno County Superior Court  
Family Law Department  
Attn: Calendar  
1100 Van Ness Avenue, Room 401  
Fresno, CA 93724-0002

Hearing Date: \_\_\_\_\_

prior to the continued hearing date. The FCS recommendation will not be signed as the order of the court. When the signed stipulation is submitted to the Clerk, the

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Clerk must be told of the hearing date so that the Clerk can take the matter off calendar.

### D. Mandatory Settlement Conference Regarding Objections

1. Before withdrawing an objection, the objecting party shall notify the Clerk in the department where the matter is set to be heard, the responding party and **Family Court Services** that the objection is withdrawn.

2. If the Mandatory Settlement Conference Regarding Objections is taken off calendar or the objecting party does not appear at the Mandatory Settlement Conference Regarding Objections, the matter may be submitted on the FCS recommendation and the court may, in its discretion, adopt the recommendation and make it an order.

3. If the objection is withdrawn because of a stipulation which resolves the issues, the stipulation and order shall be submitted for signature to the hearing officer. Pending receipt by the court of the stipulation and proposed order, the Mandatory Settlement Conference Regarding Objections shall be continued to a specified date. The stipulation shall be submitted at least ten (10) days before the continued date. (Effective January, 2000)

### **RULE 34.10                    REMOVAL OF CHILDREN IN VIOLATION OF A COURT ORDER**

If the minor child(ren) is/are removed by either party under circumstances which violate the custody or visitation order, and that violation establishes probable cause to believe that a crime has been committed pursuant to Penal Code § 278.5, the court may award physical custody ex parte to the parent deprived of a custody or visitation right. (Effective July, 1992)

### **RULE 34.11                    REQUESTS FOR CHANGE OF MEDIATOR (FAMILY CODE § 3163)**

A. The assignment of mediators is an administrative function of Family Court Services. Mediators are assigned on a predetermined rotational basis, except by specific order of the court.

B. Peremptory challenges to FCS mediators shall not be permitted.

C. A change of mediator may be granted by FCS in the following situations:

1. Upon a referral of the case for a family assessment and/or custody investigation.

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2. When a conflict of interest exists:

a. Where the mediator has personal knowledge of the matter or parties outside of the mediation context;

b. Where the mediator has a financial interest in the potential outcome of the matter;

c. Where the mediator is related to the parties within the third degree;

d. Where there is a substantial doubt as to the impartiality of the mediator.

D. The process for changing a mediator is as follows:

1. A request for a change of mediator must be made no later than fifteen (15) days from the date the court orders the family assessment and/or custody investigation. The objection shall be typewritten and mailed to FCS with a copy to the opposing party. **FAXED OBJECTIONS WILL NOT BE ACCEPTED.**

2. FCS shall respond in writing to the request for a change of mediator within fifteen (15) days of the request, with copies mailed or faxed to all parties. (Effective July, 1998)

### **RULE 34.12      CHILD CUSTODY EVALUATIONS**

A. **Implementation of Rule 1257.3.** The Fresno County Superior Court has the discretion to appoint a Child Custody Evaluator to conduct a psychological evaluation in all child custody and visitation matters. The provisions set forth in Rule 1257.3 of the California Rules of Court and related rules shall be followed.

B. **Peremptory Challenge of Child Custody Evaluator.** The court may allow one peremptory challenge to the Child Custody Evaluator as follows:

1. If the appointment is made in a hearing before the court, the challenge must be made at the time of hearing.

2. If the appointment is to be made pursuant to a twenty (20) day objection, then the challenge must be made within the twenty-day objection period by including the challenge as an objection pursuant to Local Rule 34.7.

C. **Withdrawal of Child Custody Evaluator.** The Child Custody Evaluator may request to be allowed to withdraw from an evaluation at any stage of the process for the following reasons:



## FRESNO COUNTY SUPERIOR COURT

1. Conflict;
2. Nonpayment of fees;
3. Lack of cooperation by a party;
4. Any other significant reason which prevents the Child Custody Evaluator from completing the evaluation.

If the Child Custody Evaluator wishes to be removed from the case, the Child Custody Evaluator shall forward a letter to Family Court Services specifically stating the reasons for the request. Family Court Services shall review the letter and forward copies of the request to each party and to the court. The parties shall have twenty (20) days to file a motion challenging the request. If no motion is filed, the court may grant or deny the request for withdrawal and Family Court Services shall notify the Child Custody Evaluator and the parties of the court's decision. **FAXED LETTERS WILL NOT BE ACCEPTED.**

D. **Complaints about Child Custody Evaluator.** Complaints about a Child Custody Evaluator's performance shall be in written form. The complaint shall detail all reasons for the complaint and shall set forth specific examples of the acts or omissions by the Child Custody Evaluator. The complaint shall be sent to Family Court Services. Family Court Services shall review the letter and forward copies of the complaint to each party and to the court. **FAXED LETTERS WILL NOT BE ACCEPTED.**

E. **Ex-Parte Communications.** Neither party may contact the Child Custody Evaluator, directly or through the party's attorney, except regarding procedural matters such as setting appointments.

During the evaluation process, any documents provided to the Child Custody Evaluator shall also be provided to the opposing party at the same time.

The Child Custody Evaluator shall have sole discretion to conduct ex parte communications with any party, witness, attorney, mediator, counselor, therapist, physician, teacher, law enforcement officer or any other person that the Child Custody Evaluator determines is necessary to complete the evaluation process. No attorney shall contact the Child Custody Evaluator unless requested to do so by the Child Custody Evaluator or regarding procedural matters only.

After the evaluation has been completed and the report has been written, the Child Custody Evaluator may communicate with the parties or their attorneys as the Child Custody Evaluator determines. (Effective July, 2001)

# **FRESNO COUNTY SUPERIOR COURT**

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## **RULE 35: CHILD CUSTODY, VISITATION, AND THE DISTRICT ATTORNEY**

### **RULE 35.1      DISTRICT ATTORNEY'S ROLE**

The District Attorney does not represent either party in a custody/visitation dispute. (Family Code § 3132) The primary purpose of the Child Abduction Unit of the District Attorney's Office is to enforce the orders of the court through the full use of civil and criminal remedies available. (Family Code § 3130)

The District Attorney of Fresno County (hereinafter referred to as District Attorney) acts on behalf of the court in enforcement of specific child custody and child visitation orders. The Fresno County District Attorney may advise the appropriate department of its findings regarding the facts of a custody/visitation situation. Such orders may issue from the Juvenile Division, Probate Department, Family Law Department, or other appropriate department or division. **If a conflict arises between two (2) or more custody/visitation orders, the hierarchy of enforcement of custody orders is as follows:**

1. Juvenile Court Orders (Welfare & Institutions Code § 300 et. seq.).
2. Adoption and Parental Termination Orders (Family Code § 8500 et.seq.).
3. Order for Guardianship of person when is was issued prior to a family law order (Probate Code § 1500 et.seq. and § 2250 et.seq.).
4.
  - a. Family Law Orders (Family Code §§ 3020-3192);
  - b. Order pursuant to the Uniform Parentage Act (Family Code §§ 7600-7730).
5. Domestic Violence Orders (Family Code § 5511).

If a conflict occurs between any such orders, the parties shall immediately inform each of the respective Departments, the District Attorney, and other parties. For the purposes of this section "District Attorney" includes the Child Abduction Unit of the Fresno County District Attorney's Office. (Effective January, 1999)

### **RULE 35.2      REQUEST FOR DISTRICT ATTORNEY SERVICES**

A party requesting the District Attorney to locate and/or return a child, or locate the other party, shall fully complete the necessary questionnaire and submit all the supporting documents required. The requesting party shall notify the District Attorney of any changes of address and/or phone number within two (2) working

## FRESNO COUNTY SUPERIOR COURT

days. Complete and continuing cooperation is required from the requesting party to obtain continuing assistance. The requesting party must also immediately notify the District Attorney of any other changes of circumstances or of the recovery of the child.

A party who knows where the child is, but is experiencing difficulty in exercising court ordered visitation, may make application for assistance to the District Attorney Child Abduction Unit by complying with Rule 35.5. The supporting police report should document the custody/visitation violation, rather than a missing person report.

If a requesting party does not fully cooperate, the District Attorney may terminate its efforts. (Effective January, 1999)

### **RULE 35.3                    FUNCTION OF THE DISTRICT ATTORNEY**

A.     The best interest of the child(ren) is the primary concern.

B.     The District Attorney shall maintain an investigative file which, upon request **by the court**, shall be made available to the court. This file is confidential. If a party wants to examine any information in the file that party must make a noticed motion pursuant to Welfare & Institutions Code § 11478.1(c)(5).

C.     Before the District Attorney may enforce a custody/visitation right, the complaining party must file a police report and if the location of the child(ren) is unknown, file a missing person report with their local police agency. (Effective July, 1998)

### **RULE 35.4                    SPECIAL ISSUES**

A.     The Fresno County District Attorney may conduct its own investigation before implementing or enforcing any custody/visitation order. A party may submit his or her supporting documentation directly to the Fresno County District Attorney to expedite the process.

B.     If a child is unlawfully concealed within or outside the County of Fresno, or the State of California, the District Attorney's Office will, upon request, try to locate and return the child to the parent having legal custody pursuant to a valid enforceable court order.

**WARNING: Orders under the Domestic Violence Act may not be enforceable outside of California. In the past, other states have failed to recognize such orders under the UCCJA. (Family Code § 3402)**

C.     Before the District Attorney will consider enforcing an order, the District Attorney will consider the *status quo*. A current UCCJA form (signed under penalty of perjury) must be submitted to the District Attorney.

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**WARNING:** The District Attorney may not be able to enforce orders where the terms are ambiguous and/or unclear.

D. If the requesting party has not exercised or attempted to exercise his or her right to custody and/or visitation for a significant period of time, no action will be taken by the District Attorney until a new order is made. (Effective July, 1996)

### **RULE 35.5                    ORDERS TO LOCATE AND RETURN**

The requesting party must first apply and cooperate with the District Attorney's Office for assistance in locating and returning a minor child.

To obtain the assistance of the District Attorney's Office to locate and/or return a minor child, the requesting party must have a valid custody order, either temporary or permanent, which is enforceable under the Uniform Child Custody Jurisdiction Act (UCCJA). The requesting party has the duty to provide the District Attorney with a certified copy of the order.

In situations where the whereabouts of the child(ren) are unknown, the requesting party must first:

A. Contact the appropriate local law enforcement agency and make a "Missing Person's Report" (Penal Code §§ 14205, 14213, 277, 278, and 278.5) and obtain the report number.

B. Contact the Child Abduction Unit of the Fresno County District Attorney's Office and:

1. Complete the Child abduction/Visitation questionnaire.
2. Complete the Declaration Under Uniform Child Custody Jurisdiction Act.
3. Provide the police report number.
4. Submit a certified copy of the valid custody order.

In situations where the location of the child(ren) is known, the requesting party must file a police report and do all of the above, except file a missing persons report.

If the requesting party is represented by counsel, the counsel shall instruct the client to apply to the District Attorney's Office for assistance in locating and returning a minor child. The client shall comply with Rule 35.4 and Rule 35.7. With

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the permission of the court and for good cause, counsel may submit the application for the client. The District Attorney shall promptly comply with Rule 35.3.

C. If counsel wishes to have the court issue a Family Code § 3130 order, counsel must file a notice of motion or obtain an order to show cause. A copy of the moving papers shall be served on the other party and upon the:

Fresno County District Attorney's Child Abduction Unit  
2200 Tulare Street, 17<sup>th</sup> Floor  
Fresno, CA 93721

This motion shall contain a declaration which sets forth facts required pursuant to Family Code §§ 3030 and 3031. If premises are to be searched for the child(ren), the address and supporting information where the child(ren) can be found shall be included in the declaration and proposed order. The matter may then be referred to the District Attorney by the court for investigation.

The District Attorney, if properly noticed, shall appear at the noticed motion or order to show cause hearing for the purpose of assisting the court.

The District Attorney will prepare the Family Code § 3130 orders, either after hearing or upon conclusion of motion brought by private counsel or upon ex parte declaration by the District Attorney's Office, unless the court directs otherwise.

The following is an example of an order directing the District Attorney to locate and return a minor child(ren):

### Family Code § 3130 Orders (Abductor a party to the Action)

1. The Fresno County District Attorney shall take all action necessary to locate and physically retrieve the minor child(ren) (name of child(ren)), born (date of birth), and place the child in the custody of (petitioner/respondent), a **responsible relative** or Child Protective Services, or pursuant to further order of the court.

2. The District Attorney shall retain private counsel or other legal services to represent the District Attorney's Office or this court to enforce the provisions of the Uniform Child Custody Jurisdiction Act, the Hague Treaty or other treaties involving child access rights, in other states and countries where the child is found, if the District Attorney deems it necessary.

3. The District Attorney shall enforce compliance with custody/visitation orders in the proper jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the Federal Parental Kidnapping Act, (28 U.S.C. 1738A) and the Hague Convention on International Child Abduction (42 U.S.C. 11601 et seq.). Note: Some countries will not allow the District Attorney to appear in their courts on civil matters.

## FRESNO COUNTY SUPERIOR COURT

4. (Petitioner/Respondent) is granted temporary exclusive physical custody of (name of child(ren)).

5. The District Attorney may enforce all orders for visitation and custody including criminal prosecution.

6. The State of California shall reimburse the County of Fresno for the cost involved in enforcing child custody/visitation orders.

7. The parties shall be jointly and severally liable to reimburse the State of California (through the County of Fresno) for all cost incurred in returning the child(ren), including, but not limited to rendering treatment for reunification counseling, housing and foster care incurred by Child Protective Services, attorney fees, medical cost and enforcing this order. Pursuant to Family Code § 3134(b), the court reserves jurisdiction to allocate the cost between the parties. Any party may bring the issue of allocation before the court by noticed motion to all parties and the District Attorney.

8. The Fresno County District Attorney shall search the premises at (addresses) for the purpose of determining whether the minor child(ren) is/are present and retrieving the minor child(ren).

9. The child(ren) shall not be taken or removed from the State of California, for any purpose until further order of this court.

10. If at the time of retrieval of the child(ren), allegations of child abuse or neglect are made, the District Attorney's Office shall:

A. Place the minor child(ren) with a suitable relative of the children and bring a motion to join the relative in the action.

B. If there is no suitable relative available, to place the child(ren) with Child Protective Services, who shall investigate the allegations and take appropriate action. Child Protective Services shall bill the District Attorney's Office for the cost of housing and foster care and shall maintain custody over the children until further order of this court or the Juvenile Court.

C. The District Attorney shall also initiate a "good cause" investigation addressing the allegations and take appropriate action.

11. Immediately upon placement, the District Attorney shall bring any issues of custody/visitation, child abuse, neglect, endangerment and joinder before this court for further orders.

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12. Upon recovery of the children a copy of this Application and Order herein shall be served on all parties and all parties are ordered to contact Family Court Services, at (559) 488-3241, for mediation.

13. The contents of this order and supporting documents are confidential and prior to the recovery of the child(ren) are not to be revealed to anyone except individuals necessary to achieve the effect of this order. **The Clerk shall seal this document until notified by the District Attorney's Office that the child(ren) have been recovered.**

14. Any previous orders issued in this action, consistent with this order, shall remain in full force and effect.

If the custodial parent is not represented by counsel, the District Attorney may, where appropriate, prepare the application to obtain the order to locate and return the minor child.

If the child is in the control or possession of a non-party, other procedures may be required. (Effective January, 2000)

### **RULE 35.6                    ORDER TO ONLY LOCATE PURSUANT TO FAMILY CODE § 3130**

The District Attorney will, upon request of an aggrieved party who complies with Rule 35.5, take all necessary actions to locate the other party and child(ren). (Effective July, 1992)

### **RULE 35.7                    NOTICE TO THE COURT**

Upon location of the other party and/or child(ren), the District Attorney may report to the appropriate court and seek further direction. Family Code § 3130.

In the event the District Attorney brings this matter before the court by complaint, petition, notice of motion or order to show cause, the District Attorney shall appear at the first hearing date to assist the court. The District Attorney shall not represent either party at any hearing. Family Code §§ 3130 and 3132. (Effective July, 1996)

### **RULE 35.8                    VISITATION**

If an order for child custody or visitation is unenforceable due to vagueness or ambiguity or if there has been a significant change of circumstances, the Child Abduction unit may apply ex parte and obtain a court order referring the matter to Family Court Services for mediation. The District Attorney shall notice each party of the order of the court referring the issues to Family Court Services. (Effective July, 1996)



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## **RULE 35.9                    GOOD CAUSE FILINGS**

As defined in Penal Code § 278.7, "good cause", "domestic violence", and "emotional harm", may be recognized as a defense to temporarily concealing a child to protect a child from another person having a right to custody/visitation.

A.     A person having a good faith and reasonable belief that a child may be endangered if a custody right is enforced shall file a report with the District Attorney in a timely manner. This filing shall not invalidate a court order but, upon the District Attorney's discretion, may delay the enforcement of an order by the District Attorney for no more than thirty (30) days to provide the party an opportunity to bring the issue before the court. This party is hereafter called the "complaining party" and the other party is the "responding party".

B.     During the time interval between the date the "good cause" is filed with the CAU and the date the matter is heard by the court:

1.     The complaining party SHALL contact Comprehensive Youth Services or any other facility designed to supervise visits within twenty-four (24) hours of receiving notice from the responding party of their desire to visit with the child(ren) and make arrangements for visitation to occur. The visits shall be limited to no more than four (4) hours per week.

2.     Any cost of the supervised visitations shall be prepaid by the complaining parent. Pursuant to Family Code § 3134(b), the court reserves jurisdiction to allocate the cost of supervised visitation between the parties. Any party may bring the issue of allocation before the court by a NOM/OSC served on all parties and the District Attorney.

C.     The address of the complaining party shall remain confidential until released by the court.

D.     The complaining party shall file a request for a determination of custody and visitation rights with the court within thirty (30) days of the date they reported the "good cause" to the District Attorney. The court may consider failure to file a request within this period as evidence of contempt of court.

E.     The District Attorney shall immediately initiate an investigation into the validity of the "good cause" report. The investigative findings shall be made available to the court and/or Family Court Services.

F.     The District Attorney shall notify the court that a "good cause" report has been made.

G.     **NO "good cause" report shall be filed in conjunction with any other court documents or moving papers.**

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H. The delay of enforcing a custody/visitation right shall not be extended past the thirty (30) day period to file a request with the court without the permission of the court.

I. The District Attorney shall retain the original and all copies of "good cause" reports and shall not release any copies to anyone but the court without the permission of the court.

J. The District Attorney shall make a record of time lost by the responding party and report such findings to the court upon request of the responding party.

K. If the complaining party fails to prove up his "good cause" at the time of the hearing, the court may order that the injured party be allowed to make up all of the time missed for visitation. If the court determines that the making of the "good cause" report was improper, the court may consider the lack of justification for the report as a significant change of circumstances which may justify a change of custody and/or visitation.

L. If the CAU or the court determines the complaining party made a knowingly false report, the court may consider this fact solely as the basis for a change of custody and may also consider it as evidence in a contempt proceeding. Family Code § 3027.

M. The District Attorney shall advise the complaining party of the consequences of filing a "good cause" report and, upon request, advise the responding party of their rights pursuant to these rules. (Effective July, 1998)

### **RULE 35.10      CONFIDENTIALITY OF DISTRICT ATTORNEY FILES**

Any party requesting information from a District Attorney confidential file must file a noticed motion pursuant to Welfare & Institutions § 11478.1. (Effective July, 1992)

### **RULE 35.11      AVAILABILITY OF DISTRICT ATTORNEY INVESTIGATORS FOR TESTIMONY**

A. The County of Fresno charges witness fees whenever a county employed District Attorney investigator is subpoenaed to testify in a civil case. A charge of \$150.00 is authorized under Government Code § 68096.1.

B. To subpoena a District Attorney investigator to appear, the following must be delivered to the CAU, as the authorized agent:

1. The original and one (1) copy of the subpoena to appear.

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2. A check in the amount of \$150.00 made payable to Fresno County District Attorney.

The mailing address for the District Attorney - Child Abduction Unit is:

Fresno County District Attorney-Child Abduction Unit  
2200 Tulare Street, 14th Floor  
Fresno, CA 93721

C. The County of Fresno shall be reimbursed for expenses, such as salary and other compensation for the time a Fresno County employee serves as a witness. An hourly fee will be charged in all cases in which a CAU appears in court. Charges are assessed for time the CAU is on call and unable to attend to other duties.

Any unused monies will be returned to the depositing party. If expenses exceed the deposit, the difference shall be paid to Fresno County District Attorney.

D. If matters are taken off calendar, the CAU must immediately be informed.

E. Unless otherwise directed, the CAU will be on call rather than personally present in court.

F. In the event the matter is continued, the previously subpoenaed CAU may be ordered back to the continued hearing date and shall be available at District Attorney's office on an "on call" basis. If the mediator is required to testify, the notification to appear at the continued hearing may be made by telephone. (Effective July, 1998)

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## **RULE 36: SETTLEMENT CONFERENCES**

### **RULE 36.1            MANDATORY PROCEDURE**

A. Court settlement conferences are mandatory and will be scheduled by the Calendar Clerk. A trial date will not be set except by the presiding Family Law Judge at the time of the court settlement conference and after a determination that no further court settlement conferences will settle the case. The trial date will be set a reasonable time after the last court settlement conference. This section may not apply to actions filed by the District Attorney.

B. Office settlement conferences are also mandatory and shall be conducted prior to the day of the court settlement conference.

C. **IT IS THE POLICY OF THIS COURT TO SETTLE CASES AND ISSUES TO THE EXTENT LEGALLY POSSIBLE. COMPLIANCE WITH THESE SETTLEMENT CONFERENCE RULES, ATTENDANCE AT BOTH OFFICE AND COURT SETTLEMENT CONFERENCES, AND FULL PREPARATION BY BOTH PARTIES AND ATTORNEYS ARE MANDATORY. SANCTIONS WILL BE IMPOSED FOR NONCOMPLIANCE.** (Effective July, 1998)

### **RULE 36.2            MANDATORY OFFICE SETTLEMENT CONFERENCE**

In all cases set for court settlement conference, the parties and their respective attorneys shall meet at an office settlement conference together with the appropriate accountants and other experts to attempt to settle all issues of the case. Attendance is **MANDATORY** (see Rule 36.5). This rule does not apply if any case involves allegations of domestic abuse and neither party is represented by an attorney.

A. The parties and their attorneys shall complete an AFFIDAVIT OF COMPLETED OFFICE SETTLEMENT CONFERENCE, which shall be attached to the Court Settlement Conference Statement.

B. The parties and their attorneys shall exchange information and documents required to be produced at the court settlement conference. (See Rule 36.13)

**THE PARTIES SHALL MAKE EVERY GOOD FAITH EFFORT TO SETTLE THE CASE AT THE OFFICE SETTLEMENT CONFERENCE.** (Effective July, 1998)

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## **RULE 36.3            SETTING OF COURT SETTLEMENT CONFERENCES AND TRIAL**

After the filing of an at issue memorandum, the Clerk shall mail a notice to the parties of the date and time set for the court settlement conference. The trial date will only be set at the end of the final court settlement conference in the event full settlement cannot be reached. (Effective July, 1998)

## **RULE 36.4            ONE SETTING PER DAY**

A. The Calendar Clerk shall not set an attorney (except for a deputy district attorney) for more than one (1) court settlement conference per day.

B. If the Calendar Clerk inadvertently double-sets an attorney, it shall be that attorney's obligation to immediately inform the Clerk and the opposing party, and attempt to obtain an alternate date. The parties are expected to cooperate in selecting an alternate date. (See Rule 36.5(B) regarding the selection of an alternate date.) (Effective July, 1998)

## **RULE 36.5            ATTENDANCE**

A. All parties and their attorneys shall attend both the office and court settlement conferences. Attendance cannot be avoided by agreement of the parties. If a party resides out of state, then that party may be excused from personally attending, providing that party is available by telephone.

B. Requests by an attorney or party to attend the court settlement conference on an alternate date shall be made immediately upon receipt of the Clerk's notice of setting. If the attorneys and parties agree, any alternate date approved by the Calendar Clerk may be selected. The Calendar Clerk shall be notified immediately by letter of the new date, with a copy to the opposing party.

C. All attorneys and their parties must be present in court promptly at the time set. Attendance at a later time by agreement or to terminate the court settlement conference is not permitted without permission of the court.

D. Parties and their attorneys shall check in with the bailiff upon arrival at court and shall advise the bailiff of their whereabouts during the court settlement conference.

E. The bailiff will notify the parties and their attorneys when the judge will meet with them.

F. Attorneys and parties without attorneys shall report to the bailiff immediately upon achieving settlement, whereupon the judge will hear the

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stipulation in court in advance of all remaining settlement conferences. (Effective July, 1998)

### **RULE 36.6                    REMOVING CASE FROM CALENDAR**

If a case settles after the At Issue Memorandum has been filed (regardless of whether or not the Clerk has mailed a notice of court settlement conference) or the parties agree that the case shall be removed from the settlement conference calendar, the parties shall immediately telephone the Clerk and so state. On the same day, one of the parties shall send a letter to the Clerk with a copy to the opposing party, confirming the fact that the case has been taken off calendar. (Effective July, 1992)

### **RULE 36.7                    COMPLETION OF DISCOVERY**

A. All discovery should be completed in advance of the date set for the court settlement conference. Failure to have completed necessary discovery may result in sanctions.

B. If discovery has not been completed because the opposing party has failed to respond in a proper or timely manner to discovery requests, then appropriate motions shall be timely filed on the law and motion calendar. (Effective July, 1992)

### **RULE 36.8                    LACK OF CLIENT COOPERATION**

Except for good cause, the court will not grant a continuance of a settlement conference or a trial date because a client wishes to substitute attorneys. If an attorney determines a motion to withdraw is appropriate, the motion shall be filed as soon as possible. (Effective July, 1992)

### **RULE 36.9                    COURT SETTLEMENT CONFERENCE STATEMENTS**

The form and content of court settlement conference statements shall comply with the following:

A. **Case Name and Number.** The case name and number shall appear on all pages.

B. **Introduction.** The introduction shall contain the date and time set for the court settlement conference and the names of the attorneys and parties they represent.

C. **Statistical Information.** This section shall contain a summary of the statistical facts of the marriage:

1. Date of marriage;

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2. Date of separation;
3. Duration of the marriage;
4. Ages and occupations of the parties;
5. Name(s) and age(s) of the child(ren);

D. **Prior Orders.** This section shall contain a brief summary of all relevant prior orders of the court.

E. **Child Custody/Visitation.** If child custody or visitation is at issue, all relevant facts concerning these issues shall be set forth in full, along with the proposed order. If there are no issues regarding child custody or visitation, this section shall contain a sentence stating "No Child Custody/Visitation issues."

F. **Child Support.** If child support is at issue, a current Income and Expense Declaration shall be attached. All relevant facts shall be discussed including the guideline support amount and reasons, if any, for deviating from that guideline. Any public assistance involvement must be revealed. If there are no issues regarding child support, this section shall contain a sentence stating "No child support issues."

G. **Spousal Support.** If spousal support is at issue, a current Income and Expense Declaration shall be attached. The items required to be considered by the court pursuant to Family Code § 4320 shall be set forth and briefly discussed. If there are no issues regarding spousal support, this section shall contain a sentence stating "No spousal support issues."

H. **Attorney Fees and Costs.** If attorney fees are at issue, a current Income and Expense Declaration shall be attached with Item 19 of Expense Information completed. The number of hours worked, the hourly rate, an itemization of court costs and expert fees shall be set forth, concluding with a specific request. In addition, a method of payment of such fees and costs shall be proposed. If there are no issues regarding attorney fees, this section shall contain a sentence stating "No attorney fees issues."

I. **Community Property and Debt Division.** Each party shall prepare a community balance sheet which shall:

1. Set out each item of community property and debt to be divided.
2. State whether there is a dispute regarding the property or debt, and indicate the nature of the dispute, if any.



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3. State the fair market value of each item of community property and the amount of each debt.

4. State who is to receive each item.

5. State the equalization payment, if any, required to equalize the division of community property.

6. State any offsets to the equalization payment.

7. In the event there is a claim of separate property, list each item and state the basis of the separate property claim.

J. **Separate Property.** If a claim of separate property is at issue, the items claimed to be separate property and the legal basis for the claim shall be set forth in full. If there is a claimed apportionment of an asset between separate and community interest, the exact percentages or dollar amounts shall be set forth, followed by a cogent explanation of the basis for the proposed division. If there are no issues regarding separate property, this section shall contain a sentence stating "No separate property issues."

K. **Settlement.** If any of the foregoing matters have been settled, the terms of the settlement shall be set forth under the appropriate headings.

L. **Confidential Information.** If, for good cause, a party prefers not to reveal a fact or a proposal for settlement to the opposing party, then a separate letter labeled "Confidential" shall be enclosed to the judge only. The contents of such a letter will not be revealed to the opposing party without the express oral consent of the sender, and then only in the presence of the sender.

M. **Points and Authorities.** For each disputed issue regarding a question of law, the Mandatory Settlement Conference Statement shall include points and authorities as follows:

1. A statement of the issue;
2. A brief statement of facts;
3. A brief legal argument and supporting authority; and
4. A conclusion.

N. **Preliminary Declaration of Disclosure Requirement.** The settlement conference SHALL NOT BE CALENDARRED if the party filing the At Issue Memoranda has not served his or her fully completed Preliminary Disclosure

## **FRESNO COUNTY SUPERIOR COURT**

Declaration and filed the Proof of Service. In the event one of the parties has failed to serve the Preliminary Disclosure Declaration and file the Proof of Service, the other party shall be entitled to seek sanctions. (Effective January, 2000)

### **RULE 36.10      COURT SETTLEMENT CONFERENCE STATEMENT DOCUMENTS**

Copies of the following documents shall be brought to all court settlement conferences, if an unresolved issue requires their production (these documents are not to be attached to the Court Settlement Conference Statement):

- A. All real and personal property appraisals and pension plan evaluations.
- B. Bank, credit union, savings account balances, and statements of balances of other liquid accounts, as of date of separation and relevant dates thereafter.
- C. Promissory notes, deeds, and other documents of title or major debt, bills from creditors and negotiated bank checks.
- D. Statement of earnings of either spouse whenever child or spousal support or attorney fees are at issue.
- E. An itemization of all furniture, furnishings, appliances, utensils, and all other personal property, with the party's best estimate of value of each item, unless the parties previously have agreed to some reasonable division of these items, or unless an appraisal of these items is enclosed.
- F. A statement from the carrier of the cash value of a whole life insurance policy.
- G. If a party proposes an immediate award of the full community interest of a pension plan, then that party must obtain an actuarial or other appropriate and relevant valuation of the plan. The valuation should be requested sufficiently in advance of the court settlement conference so that the written evaluation is available at the court settlement conference. (Effective July, 1992)

### **RULE 36.11      TIME AND MANNER OF DELIVERY OF STATEMENTS**

- A. Each party shall insure that a copy of the Court Settlement Conference Statement is in the hands of the opposing party at least five (5) court days prior to the court settlement conference. Court Settlement Conference Statements shall be delivered to:

# FRESNO COUNTY SUPERIOR COURT

Fresno County Superior Court  
Family Law Department  
Attn: Calendar  
1100 Van Ness Avenue, Room 401  
Fresno, CA 93724-0002

Settlement Conference Hearing Date \_\_\_\_\_

B. A proof of service shall be attached to the Court Settlement Conference Statement evidencing delivery to the opposing party.

C. The District Attorney's Office is not required to prepare and deliver Court Settlement Conference Statements on actions which they have commenced.  
(Effective July, 1998)

## **RULE 36.12      SUBSEQUENT SETTLEMENT CONFERENCES**

If, after an initial court settlement conference, the court settlement conference is continued to another date, it will NOT be necessary to submit another Court Settlement Conference Statement, provided there has been no change of circumstances since the submission of the last Court Settlement Conference Statement, unless ordered by the court. (Effective July, 1999)

## **RULE 36.13      PRELIMINARY DECLARATION OF DISCLOSURE**

A copy of the Judicial Council form 1292.05 Declaration Regarding Service of Preliminary Declaration of Disclosure shall be served on the opposing party no later than five (5) court days before the court settlement conference. This document shall be brought to court for the court settlement conference. Any party filing an at issue memorandum or a counter at issue memorandum must serve a Preliminary declaration of disclosure on the opposing party prior to submission of the at issue memorandum. (Effective July, 1999)

## **RULE 36.14      SETTLEMENT RESULTING IN STIPULATIONS**

A. If settlement is achieved, the parties shall inform the bailiff and the judge will proceed to hear the stipulation in open court and, where applicable, grant the dissolution of the marriage.

B. Unless otherwise agreed in open court by the parties, it shall be the responsibility of the petitioner to state the settlement, obtain the dissolution of the marriage, and prepare the Judgment or Order on Reserved Issues, and within ten (10) days from the date of the MSA submit it to opposing party for approval. The procedure set forth in Rule 31.19 shall be applicable regarding the approval by opposing attorney and signature of the court. All documents transferring title to property shall accompany the Judgment or Order on Reserved Issues.

## **FRESNO COUNTY SUPERIOR COURT**

C. All in-court stipulations shall be preceded by appropriate waivers of notice of time and place of trial and a statement of decision. They may be preceded by waivers of right to appeal and right to move for a new trial. The waivers shall be set forth in the Judgment or Order on Reserved Issues. (Effective July, 1994)

### **RULE 36.15      LACK OF COMPLIANCE WITH RULES**

Attorneys and parties shall comply with the foregoing rules, and shall be thoroughly prepared for both the office and the court settlement conferences. In absence of such compliance or proper preparation, the court may award attorney's fees, impose sanctions, delay or accelerate the date to be set for trial, or continue the court settlement conference to another date, or any combination of the foregoing, and/or any of the other sanctions set forth in Rule 30.1 within the discretion of the court. (Effective July, 1994)

### **RULE 36.16      EARLY DISPOSITION (VOLUNTARY) CONFERENCE**

A. The comprehensive and strict requirements applicable to court settlement conferences require considerable preparation and hence an expenditure for attorneys fees and costs. Once the case is at issue and counsel agree, they may obtain an early disposition conference before the Family Law hearing officer by telephoning the Family Law Department/Family Support Department and requesting the matter be set at a time normally calendared for court settlement conferences. The Clerk then shall set the matter on the settlement conference calendar, but with a notation "EDC."

B. The early disposition conferences must be set more than two (2) weeks in advance of the calendared court settlement conference for the case, and the parties and their attorneys, if any, must be present. The early disposition conference shall not replace the office settlement conference.

C. The rules governing court settlement conferences shall not apply, except that negotiations shall be confidential.

D. If the case is not settled at the early disposition conference, attendance at the regularly scheduled court settlement conference and compliance with these rules are mandatory. (Effective July, 1998)

### **RULE 36.17      PARTIAL STIPULATIONS**

On occasion, not all of the issues can be settled. If the remaining issues can be heard within the time constraints of the Family Law and Motion Department, the parties shall recite the matters stipulated to, and ask the hearing officer to place the remaining issues on the law and motion calendar or stipulate that the hearing officer may hear and determine the remaining issues at that time. Such requests may be granted in the hearing officer's discretion. (Effective July, 1998)

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## **RULE 36.18      ATTORNEY CALENDARS**

Attorneys SHALL bring their calendars to the court settlement conference.  
(Effective July, 1992)

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# FRESNO COUNTY SUPERIOR COURT

## **RULE 37: ADOPTIONS**

### **RULE 37.1      STEPPARENT ADOPTIONS**

Petitioners or their attorney are responsible for filing the petition for adoption with the Clerk. Once the petition has been filed, a conformed copy must be sent to:

Family Court Services  
2200 Tulare Street, Suite 1111  
Fresno, CA 93721

Family Court Services will notify the petitioners by mail to set up an appointment in order to conduct an investigation. FCS will inform the parties of the necessary documents they must bring to the interview.

Once the investigation has been completed, Family Court Services or the petitioners' attorney will mail a copy of the report and recommendation to the petitioners and file the original with the Clerk. Once the report has been received by the petitioners and all notices have been completed, the adoption is ready to be placed on calendar.

To place the matter on calendar, the petitioners or the petitioners' attorney must call the Clerk (telephone: (559) 488-3446. All adoption matters are calendared in the Family Law Department.

**In the event there is a pending Family Law matter regarding the same children, the parties shall submit a declaration so stating and the adoption case shall be set in the same department as the Family Law matter.** (Effective July, 1999)

### **RULE 37.2      INDEPENDENT ADOPTIONS**

Petitioners or their attorney are responsible for filing the petition for adoption. Once the Petition has been filed it is necessary for the petitioners to forward a conformed copy of the petition to:

Department of Social Services  
Fresno Adoptions District Office  
770 East Shaw Avenue, Suite # 109  
Fresno, CA 93710-7708

The State Department of Social Services is responsible for conducting an investigation and preparing a report and recommendation to the court.

## FRESNO COUNTY SUPERIOR COURT

Once the investigation has been completed, the State will send a copy of the report and recommendation to the petitioners and the original to the Clerk for filing. At this time, the adoption is ready to be placed on calendar.

To place the matter on calendar, the petitioner must call the Clerk (telephone: (559) 488-3446). All adoption matters are calendared in the Family Law Department.

**In the event there is a pending Family Law matter regarding the same children, the parties shall submit a declaration so stating and the adoption case shall be set in the same department as the Family Law matter.** (Effective July, 1999)

### **RULE 37.3            AGENCY ADOPTIONS**

Petitioners or the agency representative are responsible for filing the petition. If the agency representative is responsible for filing the petition, there is nothing for the petitioners to do other than cooperate with the agency. Once the report and recommendation of the agency is completed, the agency will send a copy of the report to the petitioners and the original to the Clerk for filing. At this time, the adoption is ready to be placed on calendar.

To place the matter on calendar, the agency representative must call the Clerk (telephone: (559) 488-3446). All adoption matters are calendared in the Family Law Department. (Effective July, 1999)



# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 38: ARBITRATION**

The court may require the parties to submit to arbitration where the parties are unable to agree to the division of the community estate.

Pursuant to Code of Civil Procedure § 1141.14, the procedures to be followed in complying with the rule are those set forth in Chapter 5, Division III, Rule 1600 et. seq., of the California Rules of Court with the following exceptions:

1. If no request for compliance with California Rules of Court, Rule 1605(a) is filed within ten (10) days after any case is ordered to arbitration, the provisions thereof are deemed waived and the administrator shall select an arbitrator at random from the panel of arbitrators. A specific arbitrator may be appointed upon stipulation of all parties at any time prior to the selection of an arbitrator by the arbitration administrator.

2. With the consent of the arbitrator, the parties may stipulate to one (1) continuance, not to exceed thirty (30) days. Any further requests for continuance shall be made by motion before the hearing officer. (Effective July, 1998)

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# FRESNO COUNTY SUPERIOR COURT

## **RULE 39: OFFICE OF THE FAMILY LAW FACILITATOR**

### **RULE 39.1            FEE FOR SERVICES**

There is no charge for services rendered by the Family Law Facilitator.  
(Effective July, 1998)

### **RULE 39.2            SERVICES PROVIDED**

A.     The Office of the Family Law Facilitator shall provide the following services:

1.     Distributing family law/family support Judicial Council forms;
2.     Providing assistance in completing forms;
3.     Preparing support schedules based on statutory guidelines;
4.     Providing educational materials to parties concerning the court process for establishing parentage, and establishing, modifying, and enforcing child and spousal support in the court;
5.     Providing referrals to the District Attorney, Family Court Services, and other community agencies and resources which provide services for parents and children.

B.     At the discretion of the Family Law Facilitator, the services provided may also include:

1.     Meeting with litigants to mediate the issues of child support, spousal support and maintenance of health insurance policies. If there are issues of domestic violence between the parties, the Facilitator shall meet with the parties separately and at separate times.
2.     Draft stipulations to include all issues agreed upon by the parties.
3.     Assist the court with research if directed to do so.
4.     Develop programs for bar and community outreach. (Effective July,

1998)

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**RULES 40-49: RESERVED**

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## VI. JUVENILE RULES

### RULE 50: GENERAL PROVISIONS

#### **RULE 50.1      AUTHORITY**

These Juvenile Rules apply to matters heard in Juvenile Court, with the exception of juvenile traffic hearings and juvenile traffic hearing appeals. (Effective January, 1999)

#### **RULE 50.2      PRESIDING JUDGE OF THE JUVENILE COURT**

There shall be one Presiding Judge of the Juvenile Court. The Presiding Judge of the Juvenile Court shall be selected by the Presiding Judge of the court. To the extent possible the Presiding Judge of the Juvenile Court shall remain in that position for at least three years. (Effective January, 1999)

#### **RULE 50.3      JUVENILE COURT COMMITTEES**

The Presiding Judge of the Juvenile Court may authorize and establish such informal committees related to Juvenile Court work and activities as the Presiding Judge of the Juvenile Court deems appropriate. Membership on such committees shall be as determined by the Presiding Judge of the Juvenile Court. (Effective January, 1999)

#### **RULE 50.4      ASSIGNMENT OF JUVENILE COURT CASES**

It is the policy of the Juvenile Court to have all matters heard by a judicial officer assigned to the Juvenile Court. (Effective January, 1999)

#### **RULE 50.5      MASTER CALENDAR REFERRALS (LONG CAUSE CASES)**

Only the Presiding Judge of the Juvenile Court shall assign any case to the Superior Court Master Calendar for trial. (Effective January, 1999)

#### **RULE 50.6      PEREMPTORY CHALLENGES**

Any challenge of a judicial officer hearing dependency matters in Juvenile Court pursuant to Code of Civil Procedure § 170, et seq. shall be reported to the Presiding Judge of the Juvenile Court. The Presiding Judge of the Juvenile Court shall take whatever legal action is appropriate, including reassignment to another department if necessary. (Effective January, 1999)

#### **RULE 50.7      DECLARATIONS OF CONFLICT AND APPOINTMENT OF**

# **FRESNO COUNTY SUPERIOR COURT**

## **NEW COUNSEL**

A. Whenever any counsel for any party in a dependency proceeding determines that a conflict of interest exists which interferes with that attorney's ability to represent that client, the attorney shall immediately file such a declaration with the court. All discovery in the possession of the attorney should be submitted to the court at the time the declaration is filed.

B. The court shall appoint new counsel upon receipt of the declaration, and the Clerk of the court shall forward discovery to that attorney.

C. The Clerk shall provide notice of appointment of new counsel to all other parties. (Effective July, 1999)



# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 51: PARTIES**

### **RULE 51.1      ATTENDANCE AT HEARING**

Unless excused by the court, each party and attorney shall attend each scheduled Juvenile Court hearing. (Effective January, 1999)

### **RULE 51.2      INDEPENDENT INVESTIGATION OF MINORS**

Anyone who appears as attorney for a minor in a dependency proceeding shall make an independent investigation pursuant to Welfare & Institutions Code § 317(e). If the minor is four (4) years or older, the independent investigation shall include an interview with the minor. (Effective January, 1999)

### **RULE 51.3      ACCESS TO MINORS PETITIONED PURSUANT TO WELFARE & INSTITUTIONS CODE § 300**

No party or attorney in a dependency proceeding shall interview the minor about the events relating to the allegations in the petition(s) on file without permission of the minor's attorney or court order.

No party or attorney in a dependency proceeding shall cause the minor to undergo a physical, medical or mental health examination or evaluation without court approval.

This rule does not apply to the DSS case manager or other authorized DSS social worker. (Effective January, 1996)

### **RULE 51.4      INTERVIEWING MINORS WHO ARE ALLEGED VICTIMS OF CHILD ABUSE**

All attorneys representing parties in a dependency case in which child abuse has been alleged and other participants in the case, including a child advocate, shall attempt to minimize the number of interviews they take of the minor relating to the events surrounding the alleged abuse. To this end anyone wishing to learn facts about the alleged incident shall first review any interviews taken or reports made by the investigating officer(s). (Effective January, 1996)

### **RULE 51.5      PRESENCE OF MINOR IN COURT**

All minors are entitled to attend court hearings. Every minor ten (10) years or older shall be told of his or her right to attend court hearings and all minors ten (10) years old or older shall be given notice by the investigating/supervising social worker.

## **FRESNO COUNTY SUPERIOR COURT**

All minors ten (10) years old or older shall attend court hearings unless excused for one of the listed reasons:

- A. The minor's attorney waives the minor's appearance;
- B. The minor chooses not to attend;
- C. The minor is excused by the court; or
- D. The minor is disabled, physically ill, or hospitalized.

No minor shall be brought to court solely for the minor to confer with his or her attorney or for a visit with a parent, relative or friend.

If the minor is present, the judicial officer hearing the case may view and speak with the minor. (Effective January, 1999)

### **RULE 51.6            GUARDIAN AD LITEM FOR MINORS**

For purposes of the federal Child Abuse Prevention and Treatment Act and Welfare & Institutions Code § 326, the DSS case manager shall be deemed to be the minor's guardian ad litem unless the court orders otherwise. (Effective January, 1999)

### **RULE 51.7            GUARDIAN AD LITEM FOR PARENTS**

The court shall appoint any person that the court deems qualified as a guardian ad litem to represent any incompetent parent or guardian whose child is before the Juvenile Court pursuant to a petition under Welfare & Institutions Code § 300. The determination of incompetency may be made by the court at any time in the proceeding based upon evidence received from any interested party. (Effective January, 1996)

### **RULE 51.8            NOTICE TO GUARDIAN AD LITEM, ACCESS TO RECORDS, RIGHT TO APPEAR**

In all proceedings, the guardian ad litem shall be given the same notice as any party, have the same access to all records relating to the case as would any party, and have the right to appear at all hearings. (Effective January, 1996)

### **RULE 51.9            CARE PROVIDERS**

A minor's care provider shall be allowed to be present at the hearing and address the court. (Effective January, 1996)

# FRESNO COUNTY SUPERIOR COURT

## **RULE 51.10      DE FACTO PARENTS**

Upon a sufficient showing the court may recognize the minor's present or previous custodians as de facto parents and grant standing to participate as parties in dispositional hearings and any hearings thereafter at which the status of the dependent child is at issue. The person seeking de facto parent status shall have the rights outlined in California Rules of Court, Rule 1412(e). (Effective January, 1996)

## **RULE 51.11      RELATIVES**

Upon a sufficient showing, the court may permit relatives of the child to be present at the hearing and address the court. The court shall hear from all parties before granting such permission. (Effective January, 1996)

## **RULE 51.12      COURT-APPOINTED COUNSEL DUTIES**

All court-appointed counsel shall comply with their professional duties as required by statute, regulation, and state and local rules of court. (Effective January, 1996)

## **RULE 51.13      FINANCIAL RESPONSIBILITY WHEN COURT APPOINTS COUNSEL**

Pursuant to Welfare & Institutions Code § 903 and California Rules of Court, Rule 1412(g), whenever a party (other than the minor) appears in dependency proceedings and the court appoints counsel for the party, or the party retains counsel, the party shall complete a Notice of Financial Responsibility form and comply with the following procedures. These procedures will be followed in ordering and collecting costs for court-appointed counsel, Juvenile Hall support, C.K. Wakefield support, and/or probation supervision from each parent or responsible party ("parent"). This rule applies to proceedings brought under Welfare & Institutions Code §§ 300, 601, and 602.

A. Upon checking in for his or her initial court appearance, each parent will be given a copy of the Notice of Financial Responsibility form (FCAC #340) and the Court Order to Report for Financial Evaluation form (FCAC #339). This will generally allow each parent to read the notice and to fill in the appropriate areas of the court Order to Report form prior to the parent's actual appearance in the Juvenile Court case. If counsel has been appointed or anticipates being appointed to represent the parent, the attorney should ask the parent whether he or she has received these forms, and provide a copy of them if needed.

B. Each parent who could be liable for costs or support and who is present in court shall complete the information concerning himself or herself on the Court Order to Report form, sign the form, and submit it to the court at the time of the initial court appearance. The court will review and sign the order at the time of the initial court hearing. The parent will be given a copy of the order. A copy will be placed in the court's file and a copy will go to the Revenue and Reimbursement

## **FRESNO COUNTY SUPERIOR COURT**

Division (RRD). Absent other consideration by the court, the court will order the responsible person to appear upon the financial officer's request or at a scheduled appointment. A separate Court Order to Report form shall be completed for each parent who may have financial liability under Welfare & Institutions Code § 903 et seq.

C. When the parent contacts RRD, RRD will assist the parent in completing a Financial Declaration form (FCAC #60). Based on the financial information provided to RRD, RRD will work with the parent and attempt to obtain a signed Agreement and Waiver of Hearing form (FCAC #98). Thereafter, RRD will complete its Report and Recommendation form (FCAC #272) and submit it to the court for its review. If a parent has requested a hearing, the court shall set the matter for hearing. Notice of the hearing shall be sent by RRD to each requesting parent. Whenever the court orders the parent to pay RRD monies pursuant to Welfare & Institutions Code § 903 et seq., RRD will thereafter have responsibility for collection of the monies consistent with the court's order. Monies ordered to be paid pursuant to this procedure shall not be made a condition of any court ordered probation or case disposition. (Effective January, 1999)

### **RULE 51.14      THE CHILD ADVOCATE PROGRAM**

The Superior Court may appoint child advocates to represent the interests of dependent children. In order to qualify for appointment, the child advocate must be trained by and function under the auspices of a Court Appointed Special Advocate Program (CASA), formed and operating under the guidelines set forth in California Rules of Court, Rule 1424 and Welfare & Institutions Code § 356.5.

The CASA program shall report regularly to the Presiding Judge of the Juvenile Court with evidence that it is operating under the guidelines established by the National Court Appointed Special Advocate Association and the California State Guidelines for Child Advocates. (Effective January, 1996)

### **RULE 51.15      CHILD ADVOCATES**

A. **Advocate's Functions.** Advocates serve at the pleasure of the court having jurisdiction over the proceeding in which the advocate has been appointed. In general, an advocate's functions are as follows:

1. To support the child throughout the court proceedings;
2. To establish a relationship with the child to better understand his or her particular needs and desires;
3. To communicate the child's needs and desires to the court in written reports and recommendations;

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4. To identify and explore potential resources which will facilitate early family reunification or alternative permanency planning;
5. To provide continuous attention to the child's situation to ensure that the court's plans for the child are being implemented;
6. To the fullest extent possible, to communicate and coordinate efforts with the case manager/social worker;
7. To the fullest extent possible, to communicate and coordinate efforts with the child's attorneys; and
8. To investigate the interests of the child in other judicial or administrative proceedings outside Juvenile Court; report to the Juvenile Court concerning same; and, with the approval of the court, offer his or her services on behalf of the child to such other courts or tribunals.

B. **Sworn Officer of the Court.** An advocate is an officer of the court and is bound by these rules.

Each advocate shall be sworn in by a Superior Court Judge before beginning his or her duties, and shall subscribe to the written oath set forth in the Appendix D2.

C. **Specific Duties.** The court shall, in its initial order of appointment, and thereafter in any subsequent order, specifically delineate the advocate's duties in each case, which may include independent investigation of the circumstances of the case, interviewing and observing the child and other appropriate individuals, reviewing appropriate records and reports, consideration of visitation rights for the child's grandparents and other relatives, and reporting back directly to the court as indicated. If no specific duties are outlined by court order, the advocate shall discharge his or her obligation to the child and the court in accordance with the general duties set forth in (A) above. (Effective January, 1999)

### **RULE 51.16      RELEASE OF INFORMATION TO ADVOCATE**

A. **Court Authorization.** To accomplish the appointment of an advocate, the Judge making the appointment shall sign an order granting the advocate the authority to review specific relevant documents and interview parties involved in the case, as well as other persons having significant information relating to the child, to the same extent as any other officer appointed to investigate proceedings on behalf of the court.

B. **Access to Records.** An advocate shall have the same legal right to records relating to the child he or she is appointed to represent as any case manager/social worker with regard to records pertaining to the child held by any agency, school, organization, division or department of the State, physician,

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surgeon, nurse, other health care provider, psychologist, psychiatrist, mental health provider or law enforcement agency. The advocate shall present his or her identification as a court-appointed advocate to any such record holder in support of his or her request for access to specific records. No consent from the parent or guardian is necessary for the advocate to have access to any records relating to the child.

C. **Report of Child Abuse.** An advocate is a mandated child abuse reporter with respect to the case to which the advocate is appointed.

D. **Communication With Others.** There shall be ongoing, regular communication concerning the child's best interests, current status, and significant case developments, maintained among the advocate, DSS, case manager, child's attorney, attorneys for parents, relatives, foster parents and any therapist for the child. (Effective January, 1996)

### **RULE 51.17      ADVOCATE'S RIGHT TO TIMELY NOTICE**

In any motion concerning the child for whom the advocate has been appointed, the moving party shall provide the advocate timely notice. (Effective January, 1996)

### **RULE 51.18      CALENDAR PRIORITY FOR ADVOCATES**

In light of the fact that advocates are rendering a voluntary service to children and the court, matters on which they appear should be granted priority on the court's calendar, whenever possible. (Effective January, 1999)

### **RULE 51.19      ADVOCATE'S VISITATION THROUGHOUT DEPENDENCY**

An advocate shall visit the child regularly until the child is secure in a permanent placement. Thereafter, the advocate shall monitor the case as appropriate until dependency is dismissed or the advocate is relieved from appointment. (Effective January, 1996)

### **RULE 51.20      FAMILY LAW ADVOCACY**

Should the Juvenile Court dismiss dependency and create a family law order pursuant to Welfare & Institutions Code § 362.4, the advocate's appointment may be continued in the family law proceeding, in which case the Juvenile Court order shall set forth the nature, extent and duration of the advocate's duties in the family law proceeding. (Effective January, 1996)

### **RULE 51.21      ADVOCATE'S RIGHT TO APPEAR**

An advocate shall have the right to be present and be heard at all court hearings, and shall not be subject to exclusion by virtue of the fact that the advocate

## FRESNO COUNTY SUPERIOR COURT

may be called to testify at some point in the proceedings. An advocate shall not be deemed to be a "party" (California Rules of Court, Rule 1410 (b)(6)); however, the court, in its discretion, shall have the authority to grant the advocate amicus curiae status, which includes the right to appear with counsel. (Effective January, 1996)

### **RULE 51.22**

### **APPEARANCE BY CONSULAR REPRESENTATIVE**

In cases where a parent or minor is a citizen of a foreign nation, the Consul and/or an attorney or representative of the Consul of that nation shall have the right to appear and participate in the court proceedings to the extent such is provided for by international agreement to which the United States is a signatory. (Effective January, 1996)

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# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 52: COURT PROCEEDINGS**

### **RULE 52.1      DETERMINATION OF PATERNITY**

The issue of the paternity of a minor may be determined in a Juvenile Court proceeding. (Effective January, 1996)

### **RULE 52.2      PATERNITY - NECESSARY COURT MEASURES**

If a person claims to be the natural/biological father of a minor who is the subject of Juvenile Court proceedings, the court may take such measures as are necessary to make a paternity finding. (Effective January, 1996)

### **RULE 52.3      PATERNITY - RIGHT TO COUNSEL / LEGAL RESPONSIBILITIES**

In any paternity proceeding arising under this rule the court shall inform the mother and the person claiming to be father of their right to be separately represented by counsel on the issue of paternity. The court shall advise the person claiming to be father of his legal responsibilities should he be found to be the natural father of the minor, including the obligation to pay child support and the possibility he may be incarcerated if he willfully fails to pay child support after being legally ordered to do so. (Effective January, 1996)

### **RULE 52.4      PATERNITY - EVIDENCE OR TESTIMONY**

The court shall permit such evidence to be taken as necessary to determine the paternity of the minor. Testimony from the mother and the person claiming to be the natural father may be sufficient to make a paternity finding. If the mother or the person claiming to be father is absent from the court proceeding, evidence in addition to testimony from those in attendance will normally be necessary to enable the court to make a paternity finding. (Effective January, 1996)

### **RULE 52.5      PATERNITY - SCIENTIFIC TESTING**

The court may order blood or other scientific tests if it believes such tests will assist in making a paternity finding. The court shall determine which party or parties shall pay for any such test. (Effective January, 1996)

### **RULE 52.6      PATERNITY - RELEASE OF FINDINGS**

Any paternity finding shall be noted in the Clerk's minutes and shall be available upon request to any person or agency having a need to know. (Effective January, 1996)

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## **RULE 52.7                    TIMELY DISCLOSURE OF INFORMAL DISCOVERY**

Pre-hearing discovery shall be conducted informally. Except as protected by privilege, all relevant material shall be disclosed in a timely fashion to all parties of the litigation. (Effective January, 1996)

## **RULE 52.8                    FORMAL DISCOVERY**

A.    **Formal Discovery.** Only after all informal means have been exhausted may a party petition the court for discovery. Any noticed motion shall state the relevancy and materiality of the information sought and the reasons why informal discovery was not adequate to secure that information. The motion shall be served on all parties at least five (5) court days before the hearing date. The date for the hearing shall be obtained from the Juvenile Court Clerk. A copy shall be served on the court before whom the matter is scheduled to be heard.

Any responsive papers shall be filed and served two (2) court days prior to the hearing.

B.    **Civil Discovery.** In order to coordinate the logistics of discovery in dependency cases, there shall be no depositions, interrogatories, subpoenas of juvenile records or other similar types of civil discovery without approval of a judge of the Juvenile Court upon noticed motion. For non-dependency cases see Rule 56.1.

C.    **Case Records and Reports (California Rules of Court, Rule 1420).** In contested proceedings, the social worker's narratives and other relevant case records shall be made available to all counsel at least ten (10) calendar days before the hearing and any updated records two (2) calendar days before the hearing. In all other cases, such documents shall be made available at least two (2) calendar days prior to the hearing.

Upon timely request, parents and guardians shall disclose to DSS such non-privileged material and information within the parent's or guardian's control which is relevant. (Effective January, 1999)

## **RULE 52.9                    PRESENTATION OF EVIDENCE**

A.    Social study reports prepared by DSS shall be made available to all parties before the hearing in accordance with the following time limitations unless otherwise ordered by the court:

1.    Jurisdictional and/or Dispositional reports are due at least forty-eight (48) hours before the hearing;
2.    Review of Dependency Status and Status Review reports are due at least ten (10) calendar days before the hearing;

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3. All other reports shall be due a reasonable number of days before the hearing but in no event less than forty-eight (48) hours before.

B. If the social study report is not timely filed or made available to all parties, then any affected party or the court may request a continuance of the hearing to the extent permitted by law.

C. The names of any experts to be called by any party and copies of their reports, if not part of a social study report prepared by DSS, shall be provided to all parties at least ten (10) days before the hearing. (Effective January, 1999)

### **RULE 52.10      SETTLEMENT CONFERENCES**

Settlement conferences shall be calendared and held prior to every contested hearing, unless deemed unnecessary by the judicial officer setting the contested hearing.

The trial attorneys and all parties shall be present at the settlement conference, unless excused by the court. All parties shall be readily available either in person or by telephone at the direction of their attorneys. A representative of DSS with authority to settle cases shall be present at the settlement conference. (Effective January, 1996)

### **RULE 52.11      REQUESTS FOR TRANSCRIPTS**

Any party wanting the court to pay for a reporter's transcript shall apply in writing to the judicial officer who heard the matter in question or to the Presiding Judge of the Juvenile Court. Alternatively, a party may orally request at a court hearing that the court order a transcript be prepared at court expense. A party may order a reporter's transcript prepared at that party's expense without seeking court authorization. (Effective January, 1999)

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## **RULE 53: MOTIONS AND ORDERS**

### **RULE 53.1      MOTION TO CHALLENGE LEGAL SUFFICIENCY OF PETITION**

In any dependency proceeding the court may entertain a pre-hearing challenge to the petition's sufficiency by a motion to challenge the legal sufficiency of the petition. Such a motion may be made in writing or orally, but must be made as early in the proceedings as possible. The court may rule on the motion at the hearing at which it is made, or may continue the hearing on the motion to another date in order to receive briefing from counsel. If the court sustains the motion, the court may grant leave to amend the pleading in the petition upon any terms as may be just and shall fix the time within which the amendment or amended petition shall be filed. (Effective January, 1999)

### **RULE 53.2      EX PARTE APPLICATIONS/ORDERS**

Ex parte applications for orders are made to the court without formal advance notice to the other parties of the application.

There are three types of ex parte applications: ex parte applications to calendar hearings, routine ex parte applications, and all other ex parte applications. (Effective January, 1996)

### **RULE 53.3      EX PARTE APPLICATION TO CALENDAR HEARING**

A. An ex parte application to calendar a hearing is made by submission of the Ex Parte Application to Calendar and Order form to the judicial officer in whose courtroom the case is assigned. An ex parte application to calendar a hearing shall not be made to a judicial officer other than the judicial officer in whose courtroom the proposed hearing is to be held, except for good cause.

1. If the Ex Parte Application to Calendar and Order form is being used to place on calendar a hearing which does not already have a hearing date, advance notice to all other parties of the intent to submit an Ex Parte Application to Calendar and Order form to a judicial officer in whose courtroom the case is assigned is not required if the proposed date of hearing is more than seven (7) calendar days from the date of submission of the form. Any party choosing to proceed thus must give all other parties seven (7) calendar days written notice of the hearing date which has been approved by the judicial officer. If the proposed date of hearing is less than seven (7) calendar days from the date of submission of the Ex Parte Application to Calendar and Order form, consent to the proposed hearing date

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must be sought from the other parties. Consent of party can be  
reflected by that party

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initialing the appropriate box on the Ex Parte Application to Calendar and Order form.

An Ex Parte Application to Calendar and Order form seeking a hearing date less than seven (7) calendar days from the date of submission of the form may be submitted to the judicial officer even if written consent to the proposed hearing date has been withheld by another party, so long as said party was given an opportunity to give written consent to the proposed hearing date. The party submitting the Ex Parte Application to Calendar and Order form shall memorialize on the form the party's refusal to give written consent to the proposed hearing date.

2. If the Ex Parte Application to Calendar and Order form is being used to obtain a continuance of a hearing date which is already on calendar, the Ex Parte Application to Calendar and Order form, which shall adequately specify the reason the continuance is sought and the length of the continuance being sought, shall first be presented to all parties. If any party objects to the proposed continuance, or requests a hearing on the request for a continuance, that party should so specify on the Ex Parte Application to Calendar and Order form. Once the Ex Parte Application to Calendar and Order form has been initialed by all parties, the form shall be presented to the judicial officer in whose courtroom the hearing is currently scheduled for consideration.

When presented with an Ex Parte Application to Calendar and Order form requesting a continuance, the judicial officer shall do one of the following:

- a. Grant the request for a continuance and select a new hearing date,
- b. Deny the request for a continuance, or
- c. Set the request for a continuance for hearing and select a date for that hearing.

When the party submitting the completed Ex Parte Application to Calendar and Order form receives that form back from the judicial officer, that party shall file the form with the Clerk's office and serve copies of the filed form on all parties.

B. If a case has an upcoming hearing date already on calendar, an Ex Parte Application to Calendar and Order form need not be submitted to place on calendar for the same date a separate/different motion on the same case. However, the party seeking to place the separate/different motion on calendar must give ten (10) calendar days written notice of the separate/different motion to all other parties,

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unless the court, for good cause shown, prescribes a lesser number of days for notice.

C. The Ex Parte Application to Calendar and Order form has no purpose other than to place, change, or continue a hearing date on the court's calendar. The Ex Parte Application to Calendar and Order form is not a substitute for a Welfare & Institutions Code § 388 petition, a formal written motion, or supporting points and authorities. (Effective January, 1999)

### **RULE 53.4      ROUTINE EX PARTE APPLICATIONS**

A. Unless counsel for a party has specifically requested advance notice of ex parte applications regarding out-of-state travel or medical/dental care for the minor, an ex parte application may be made, without advance formal notice, to the judge or referee in whose courtroom the minor's case is assigned, seeking an order permitting the minor to travel out-of-state with the foster parent or care provider, relative, or other appropriate adult acceptable to DSS, or an order authorizing that medical or dental care be performed on the minor. Any such ex parte applications shall be filed no less than fifteen (15) calendar days prior to the proposed travel or medical/dental care absent good cause shown on the application, or unless the court has specified a greater or lesser period. All such ex parte applications shall include the following information:

1. The name and address of each party to the action, and the name and address of each party's counsel;
2. The efforts made to obtain the consent of and/or give notice to the parents or guardians of the minor of the proposed travel or medical/dental care;
3. If a parent or guardian has refused to agree to the proposed travel or to give consent to medical/dental care, that fact shall be noted on the application, including the ground for the parent's/guardian's refusal, if known;
4. For any parent or guardian whom DSS was unable to locate to give notice and/or obtain consent, a description of the efforts made to locate the parent/guardian;
5. The fact the minor's counsel has been notified of the proposed travel or medical/dental care, and said counsel's position on the proposed travel or medical/dental care.

B. When presented with an ex parte application for order authorizing out-of-state travel or medical/dental care, the judge or referee shall either grant the request and issue the order, or deny the request. If the judge or referee issues the requested order authorizing out-of-state travel or medical/dental care, the party who



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sought the order shall file the ex parte application form and order with the Clerk's office and provide copies of the filed ex parte application and order form with all counsel. Any party disagreeing with the order for out-of-state travel or medical/dental care shall place the matter on calendar for further consideration.

C. An order nunc pro tunc making corrections, changes or additions to any finding or order generated at a prior hearing may be made by ex parte application where the court made an order or finding that was mistakenly omitted from the minute order. (Effective January, 1999)

### **RULE 53.5                    NON-ROUTINE APPLICATIONS**

A. All ex parte applications other than those discussed in Rules 53.3 and 53.4 are considered non-routine ex parte applications. All non-routine ex parte applications must be made only upon adequate advance notice to all counsel in accordance with this rule. Non-routine ex parte applications include, but are not limited to, requests for temporary order modifying a visitation order pending a hearing on a concurrently filed Welfare & Institutions Code § 388 petition seeking the same relief on a permanent basis.

B. Non-routine ex parte applications shall be heard at 8:30 a.m. by the judge or referee in whose courtroom the case is assigned.

C. Before submitting an ex parte application and proposed order forms to the judge or referee in whose courtroom the case is assigned for signature, the applicant shall adhere to the following procedures:

1. The applicant shall advise the judge or referee in whose courtroom the case is assigned no later than 3:00 p.m. that a non-routine ex parte application will be made the following morning in that judge or referee's courtroom.

2. The applicant shall give, no later than 4:00 p.m. on the day prior to the proposed ex parte application, advance notice of the time, place, and basic subject matter of the proposed ex parte application to all counsel and the social worker assigned to the case, except for good cause shown or consent of all counsel.

3. The notice given to the other counsel regarding the ex parte application for a non-routine order shall be stated on the Declaration Re Notice of Ex Parte Application form.

D. If the applicant has made a good faith attempt to inform the other counsel regarding the ex parte application but was unable to do so, the efforts made to inform them shall be specified on the Declaration Re Notice of Ex Parte Application form.

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E. If the applicant contends that advanced notice to one or more other counsel should not be required, the grounds upon which this contention is based shall be specified on the Declaration Re Notice of Ex Parte Application form. The completed Declaration Re Notice of Ex Parte Application form shall be submitted to the judge or referee with the ex parte application. An ex parte application which is submitted to the judge or referee without the Declaration Re Notice of Ex Parte Application form will be summarily denied.

F. Whenever possible, the ex parte application moving papers and the Declaration Re Notice of Ex Parte Application form, and any responding papers, shall be served on all other counsel as far in advance of the ex parte application as is practicable.

G. Notice of the ex parte application may be excused if the giving of such notice would frustrate the purpose of the order, or cause the minor to suffer immediate and irreparable physical or emotional harm.

H. Notice may also be excused if, following a good faith attempt, the giving of notice is not possible, or if the other counsel do not object to the relief sought by the ex parte application. (Effective January, 1996)

### **RULE 53.6                    NOTICED MOTIONS**

No noticed motion shall be accepted by the Clerk unless it is accompanied by a proof of service. A noticed motion must give ten (10) calendar days written notice to all other counsel unless the court, for good cause shown, prescribes a lesser number of days for notice. (Effective January, 1996)

### **RULE 53.7                    MOTION FOR MORE RESTRICTIVE PLACEMENT**

Any motion by petitioner to modify an existing order to a more restrictive placement shall be implemented pursuant to Welfare & Institutions Code § 387 and California Rules of Court, Rules 1430(c) and 1431. A change in an out-of-home, non-relative placement (i.e., foster care, family foster home, or group home) shall not be deemed a more restrictive placement unless the placement change is from a level twelve (12) or lower placement (as defined by State law) to a higher level which requires a mental health certification. Placement in a level thirteen (13) or higher level home is defined as being more restrictive than a level one (1) to level twelve (12) home whether the home be a foster home, a family foster home or a group home. (Effective January, 1996)

### **RULE 53.8                    MOTION FOR LESS RESTRICTIVE PLACEMENT**

Any motion by an interested party to modify the court's orders to a less restrictive placement shall follow the procedures outline in Welfare & Institutions

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Code § 388 and California Rules of Court, Rules 1430(d) and 1432, and these rules.  
(Effective January, 1999)

## **RULE 53.9                    PETITIONS FOR MODIFICATION (CONSENT CALENDAR PROCEDURE)**

The following procedures shall be followed for all Petitions for Modification filed pursuant to Welfare & Institutions Code § 388, except those petitions seeking termination of a guardianship pursuant to Welfare & Institutions Code § 366.3, subdivision (b), and California Rules of Court, Rule 1466(c).

A. Each Department will hold a “388” consent calendar on every Tuesday at 8:30 a.m., at which time the court will act upon those petitions to which there is no objection and set for hearing those petitions to which any party objects.

B. Petitioner shall select the consent calendar date for the matter to be heard based upon a date which allows at least five (5) court days’ advance notice to all parties. Petitioner is to provide copies of the petition to all parties and file the original with an attached proof of service. Copies are to be provided to both the Department of Children and Family Services and the County Counsel.

C. The Clerk shall file the Petition and calendar it on the “388” consent calendar, which shall be separate from the regular calendar. The Clerk shall distribute copies of the “388” consent calendar to all law offices on the Wednesday preceding the date of the “388” consent calendar.

D. At the hearing, if all parties consent, the matter will be submitted without hearing and a ruling will be entered. If any party enters an objection, which may be communicated to the court in person, in writing, or telephonically, the matter will be set for hearing.

E. The court’s ruling, or the date of the hearing if one is set, will be noted on a minute order.

F. Petitions seeking an interim order are to be presented to the court prior to filing and service. Interim orders will be granted upon a showing of good cause.  
(Effective July, 1999)

## **RULE 53.10                    VISITATION**

A. Visitation between a minor and the minor's parents should be as frequent as possible based on the individual circumstances of the case.

B. Orders for visitation may be issued at any scheduled hearing. Arrangements for visitation may be modified by the filing and approval of a Welfare & Institutions Code § 388 petition.

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C. Unless specified otherwise by the court, the following definitions shall apply to visitation orders:

1. Supervised Visits: DSS is responsible for the supervision of visits unless the court order specifies that a third party may assume that role. Only reasonable visits may be required to be supervised.

2. Reasonable Visits: Visits may last up to one (1) day but shall not include overnight.

3. Liberal Visits: Visits may include overnight and weekends and up to a maximum of fourteen (14) consecutive days.

4. Extended Visits: Visits which last beyond fourteen (14) consecutive days. Pursuant to State regulations, extended visits become placements after sixty (60) consecutive days.

D. Any significant decrease from the court-ordered level of a parent's/party's level of visitation shall be presented to the affected parent/party for comment before being submitted to the court. The court may set a hearing on the issue after hearing the parent's/party's comments on the proposed reduction. (Effective January, 1996)

### **RULE 53.11      TRAVEL AUTHORIZATION**

Unless ordered otherwise by the court, a minor's care provider may authorize travel by the minor within the State of California with the concurrence of DSS and, when possible, notice to the parent. Any travel for the minor out of the State of California shall require prior court approval. Any application to the court for orders regarding travel of the minor shall state what efforts have been made to notify the parent(s) and their response, if any. (Effective January, 1996)

### **RULE 53.12      APPLICATION TO COMMENCE PROCEEDING**

When a CPS referral is made to DSS and if DSS decides not to intervene or fails to report the outcome of the referral to a reporting party within ten (10) days, any person may apply to DSS requesting DSS to file a petition pursuant to Welfare & Institutions Code § 329. In that application, the applicant shall give notice and identifying information of any pending family law proceeding. If a family law proceeding is pending, a copy of the application shall also be sent to Family Court Services by the applicant. DSS shall respond to the application as soon as possible or within three (3) weeks after submission of the application. If applicable, DSS shall notify Family Court Services of its response. If the applicant is dissatisfied with the decision of DSS, the applicant may petition the Juvenile Court to order DSS to file a Welfare & Institutions Code § 300 petition as provided by Welfare & Institutions Code § 331. (Effective January, 1999)

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## **RULE 53.13**

## **REQUEST FOR REHEARING**

Any party requesting a rehearing within ten (10) calendar days after service of a copy of an order and findings shall, within one (1) judicial day after filing a request for rehearing also serve a copy of the request upon the referee from whose decision the request has arisen.

The referee shall immediately direct the court reporter, by minute order, to prepare a transcript of the appropriate hearing and deliver a copy of the minute order to the Presiding Judge of the Juvenile Court and to the counsel for the party requesting the rehearing.

Within ten (10) calendar days after being ordered to prepare the transcript, the court reporter shall deliver the transcript to the Presiding Judge of the Juvenile Court. (Effective January, 1996)



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## **RULE 54: FAMILY LAW DEPARTMENT COORDINATION**

### **RULE 54.1      FAMILY LAW DEPARTMENT AND JUVENILE COURT MANAGEMENT OF CHILD ABUSE CASES**

It is the policy of the Superior Court to identify and coordinate custody proceedings involving the same minor which may appear in multiple legal settings. It is further the policy of the Superior Court to coordinate the efforts of the different court systems so that the minor's needs are served and the resources of the family and the court are not wasted. To these ends the Superior Court and the agencies serving the court shall cooperate to increase the exchange of information and to determine the most appropriate forum for the resolution of the issues relating to the minor. (Effective January, 1999)

### **RULE 54.2      REPORT PURSUANT TO PENAL CODE § 11166**

If during the pendency of a family law proceeding a child abuse allegation against one of the minor's parents comes to the attention of a Family Court Services staff member or other mediator or evaluator, that person shall first determine whether the allegation must be reported to a child protection agency pursuant to Penal Code § 11166. If that person determines the allegation does not fall within the description of § 11166, he or she need not make a report. However, any other person may report the allegation to a child protection agency. (Effective January, 1996)

### **RULE 54.3      CHILD ABUSE INVESTIGATION**

When DSS receives a report of suspected child abuse during the pendency of a family law proceeding, it shall investigate the matter pursuant to California DSS regulations. DSS shall inform Family Court Services of any decisions it makes concerning the child abuse investigation. If DSS determines that further investigation is necessary, it shall contact the appropriate investigating agency immediately so that all investigative efforts can be coordinated. (Effective January, 1996)

### **RULE 54.4      SUSPENSION OF FAMILY LAW DEPARTMENT PROCEEDINGS**

A. **DSS Report.** After a report of suspected child abuse has been made to a child protection agency, any custody and visitation proceedings in the Family Law Department are suspended, except that the Family Law Department shall have the power to make temporary protective orders to ensure the safety of the minor. The suspension shall remain for eighteen (18) calendar days from the report or until DSS indicates in writing that it will take no action in the matter, whichever occurs first.

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B. **Welfare & Institutions Code § 300 Petition, Juvenile Court.** If a petition pursuant to Welfare & Institutions Code § 300 is filed in the Juvenile Court, all custody and visitation proceedings in the Family Law Department are suspended. Thereafter, custody and visitation issues shall be determined by the Juvenile Court. The Family Law Department shall resume custody or visitation litigation only after written authorization is received from the Juvenile Court. (Effective January, 1999)

### **RULE 54.5 INFORMAL SUPERVISION AGREEMENT**

If, during DSS's investigation, one or both parents reach an informal supervision agreement pursuant to Welfare & Institutions Code § 301, a copy of that agreement shall be sent immediately to DSS, to Family Court Services and to each parent. (Effective January, 1996)

### **RULE 54.6 COORDINATION OF CASES**

At any time during the process described herein, the Presiding Judges of the Family Law Department and Juvenile Court are encouraged to discuss problems relating to the coordination of cases involving child abuse allegations. (Effective January, 1999)

### **RULE 54.7 PETITION FOR DISMISSAL**

Whenever any interested party believes that Juvenile Court intervention on behalf of a minor is no longer necessary, application may be made to the Juvenile Court pursuant to Welfare & Institutions Code § 388 or at any regularly scheduled hearing to have the case dismissed. If the application is granted, any future litigation relating to the custody, visitation and control of the minor shall be heard in the Family Law Department or other appropriate department. (Effective January, 1999)

### **RULE 54.8 JUVENILE COURT CUSTODIAL ORDER**

If the Juvenile Court determines that jurisdiction of the Juvenile Court is no longer necessary for the protection of the minor, the court may create a custodial order consistent with the needs of the minor and thereafter dismiss the juvenile petition and case. (See Judicial Council form JV-200.) Any party may object to the proposed dismissal and be heard on the issues. (Effective January, 1996)

### **RULE 54.9 MAINTENANCE OF ORDERS IN COURT FILES**

A. **Juvenile Court.** The original court order shall be filed in the Family Law Department or other department and endorsed copies shall be filed in the Juvenile Court file. A copy of the endorsed-filed order shall be mailed to the attorneys and parties.



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B. **Superior Court.** If no court file exists in the Family Law Department or other department or in any other jurisdiction, the Clerk shall create a file under the names of the minor's parents. The file shall contain a copy of the Juvenile Court order. Pursuant to Welfare & Institutions Code § 362.4, there shall be no filing fee. (Effective January, 1999)

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## **RULE 55: MEDICAL ISSUES**

### **RULE 55.1      HEALTH ASSESSMENT**

In order for minors detained by or in the custody of the Department of Social Services (DSS) receive necessary care of their physical and mental health, and to not endanger the health and welfare of other persons, medical facilities, clinics and providers within the County of Fresno are authorized to provide, and DSS is authorized to secure, the following services to all such minors, which services follow the Statement of the Committee on Adolescents of the American Academy of Pediatrics, Health Care for Children and Adolescents in Detention Centers, Jails, Lock-ups, and other Court Sponsored Residential Facilities:

- A. A comprehensive health assessment and physical examination.
- B. Any clinical laboratory tests the physician determines are necessary for the evaluation of the minor's health status.
- C. Upon consent of the minor, sexually active minors may be screened for venereal disease. Contraceptive devices may be furnished to any minor upon the minor's request.
- D. Any immunization necessary to bring a minor's immunization up to date, and, if immunizations are recommended by the American Academy of Pediatrics for that child's age.
- E. Any routine medical care required based on the results of the comprehensive health assessment, and any routine medical care required for the care of illnesses and injury, including the use of standard X-rays. Routine medical care excludes any medical procedure requiring local or general anesthesia. Routine medical care as referred to above includes:
  - 1. First aid care for conditions which require immediate assistance from a person trained in basic first aid as defined by the American Red Cross or its equivalent;
  - 2. Clinic care for ambulatory minors with health care complaints which are evaluated and treated on an out-patient basis;
  - 3. Inpatient bed care for illness or injury which requires limited observation and/or management and does not require admission to a licensed hospital. Routine medical care does not include blood transfusions or inpatient care for illness or diagnosis which requires optimal observation and/or management in a licensed hospital.

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F. A mental health status evaluation and necessary mental health services except no placement in an inpatient psychiatric facility shall occur without compliance with Welfare & Institutions Code §§ 319.1, 500 et seq., 5585 et seq. and 6550 et seq.

G. A dental assessment, including X-rays when appropriate, and any routine dental treatment required based on the results of the dental assessment. Routine dental treatment does include the use of local anesthesia but excludes any procedure requiring general anesthesia.

Reasonable efforts should be made to obtain the consent of the parent or legal guardian for non-routine medical care while the minor is temporarily detained or placed out-of-home. In the event consent cannot be obtained (e.g., parent or guardian is not available to give consent), DSS shall request a court order for any non-routine health care. (Effective January, 1999)

### **RULE 55.2      AUTHORIZATION FOR USE OF PSYCHOTROPIC DRUGS**

Family Code § 6924 sets forth the general guidelines for providing mental health treatment to minors. Pursuant to Welfare & Institutions Code § 369(b) and absent specific informed consent of a parent or guardian, for any minor removed from the custody of the parent or guardian pursuant to Welfare & Institutions Code §§ 306, 309, or by order of the Juvenile court, approval must be obtained for the minor (if under 18 years of age) to be treated with psychotropic or anti-seizure medication.

These procedures do not limit a medical professional from beginning treatment as soon as medication is needed.

However, the treating medical professional is required to notify the Juvenile Court whenever a treatment plan for psychotropic or anti-seizure medication is commenced without consent of a parent or guardian. Although this procedure is an additional task for physicians, the benefits of having Juvenile Court approval in support of the physician prescribing these medications is a protection for both physician and patient.

A. **Commencement of Treatment.** Procedures to be followed in obtaining court authorization are as follows:

At the time a minor appears before a physician for treatment, and if the consent of the parent or guardian has not been obtained, then a 'Fresno County Authorization for the Administration of Psychotropic/Anti-Seizure Medication for Minors' (form available from Juvenile Court Clerk's Office) should be presented for completion by the minor's immediate care provider or DSS. (Note: a care provider, including a relative, may not sign the consent

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form unless the person is also the minor's legal guardian or has written authorization from a parent).

B. **Completing the Form.** Upon prescribing psychotropic or anti-seizure medication, the treating physician is to complete each of the following steps:

1. Review the instructions "To Treating Physician" at the top of the form;
2. Obtain completion of the first page of the form, making every possible effort to insure form legibility and completeness.
3. Include the minor's diagnosis, target symptoms, list of medications with likely side effects, and attach any clinical information which clarifies the treatment plan;
4. When prescribing or changing a prescription, notify the court within one court business day (Monday through Friday, between 8:00 a.m. – 5:00 p.m.) by calling the Juvenile Court Clerk's office at (559) 488-3995 (Psychotropic Desk), with the minor's name and identifying data. Enter the log number you will obtain from the Clerk in the case caption box on the front of the form.
5. Complete the authorization form and deliver a copy to the minor's care provider, parent/guardian and DSS. Send the original via U.S. mail or personal delivery no later than three (3) court days following the initial notification phone call to:

**Clerk of the Juvenile Court  
742 South Tenth Street, 2nd floor  
Fresno, CA 93702  
Attn: Psychotropic Desk**

6. If the minor's parent/guardian has signed a consent form, but after a log number was obtained from Juvenile Court, the treating physician shall submit a copy of the consent in addition to the court authorization request, to the Juvenile Court as above.
7. The Juvenile Court Clerk's Office will receive the form and immediately forward it to the appropriate judicial officer for review and decision. The Clerk will then file and distribute copies of the completed form and order to: the parent/guardian (or their attorney, if any), minor's counsel (if any), the requester and/or facility, and DSS.
8. The medication plan continues pending order of the court. Medication shall be modified or discontinued if the court so orders. The court

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will attempt to review the request with the treating physician/facility prior to any denial or modification of the requested order.

The court may be contacted directly at (559) 488-3995 or DSS at (559) 255-8320, regarding a denial of a treatment request or any modifications ordered.

Treatment practitioners are required to accept telephone inquiries from either the judge, the minor's attorney, or DSS regarding the pending application on behalf of a minor child. Therefore, a telephone number to reach the treatment practitioner must be included on the form.

Telephone inquiries from the Juvenile Court will be made to obtain additional information as necessary or to clarify facts contained in an application. The Juvenile Court will review the written request for authorization, and either approve, modify, or deny the request or order a court hearing within two (2) working days from receipt. (Effective January, 1999)

### **RULE 55.3**

#### **SIX MONTH RENEWAL FOR ALL PSYCHOTROPIC DRUG ORDERS**

Order authorizing administration of psychotropic/anti-seizure medications shall expire no later than six (6) months from date of issuance without prejudice to a renewal request using the above procedures. (Effective January, 1996)

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## **RULE 56: CONFIDENTIALITY**

### **RULE 56.1      RELEASE OF INFORMATION RELATING TO JUVENILES**

A. **Application of Rule.** Juvenile Court records are confidential. In accordance with Welfare & Institutions Code §§ 827 and 828, California Rules of Court, Rule 1423, and case law, disclosure and use of juvenile records shall be governed by this rule.

1. Definitions.

a. “Juvenile records and information” as used in this rule means any of the following:

1) Any document or record filed in any Juvenile Court proceeding,

2) Any document, record or information concerning a minor made available to the probation officer, children’s protective services (CPS) worker, or court-appointed special advocate (CASA) in preparing a report to the Juvenile Court; and

3) Any probation department, CPS, CASA, or state or local law enforcement document, record or information relating to a juvenile contact, or to a hold or arrest of a juvenile, even if Juvenile Court proceedings have not been instituted.

b. “Otherwise confidential” refers to records which are also confidential under one or more other statutes (including, but not limited to, Civil Code § 56, et seq.; Welfare & Institutions Code §§ 5328, Penal Code § 11143, 11167, 13300; Government Code § 6254; Health & Safety Code §§ 10850, 11977, 120980). Note: Such records may not be shared with other agencies or individuals without the consent of the record holder or a court order.

2. Nothing in this rule is intended to limit the exchange of information and documents as provided by Penal Code § 11166 et seq.

3. Persons or agencies receiving records or information pursuant to this rule shall not disclose such records or information to another person or agency unless such disclosure is authorized by the Juvenile Court or this rule.

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### B. Release of Documents.

1. Juvenile records and information cannot be obtained by civil or criminal subpoena. Unless otherwise authorized by law, juvenile records and information may be disclosed only by an order of the Juvenile Court as provided for by Welfare & Institutions Code § 827 and California Rules of Court, Rule 1423, except as subdivisions (d) and (e) of Rule 1423 are modified herein. For good cause shown, and compelling reasons, if a petition pursuant to § 827 seeks juvenile records and information for a court proceeding pending before a regularly sitting judge of the Superior Court of Fresno County, that judge shall be deemed to be a judge of the Juvenile Court, for purposes of applying this rule. Any order made by such a judge shall be filed with the Juvenile Court.

2. Once a petition to declare a person a dependent child or ward of the Juvenile Court has been filed, juvenile records and information, unless otherwise confidential, may be released without a court order to authorized Juvenile Court personnel, including judicial officers and the Clerk, and to those persons or agencies designated by Welfare & Institutions Code §§ 827 and 828.

3. If access to juvenile records and information is necessary and relevant in connection with, or in the course of, a civil or criminal investigation, a proceeding brought to declare a person a dependent child or ward of the Juvenile Court, or a proceeding involving custody, visitation, adoption, guardianship, conservatorship, emancipation, or domestic violence, the agencies listed below or their duly authorized representatives may share with any of the other listed agencies and their authorized representatives such records and information, not otherwise confidential, as the holder of the records and information deems to be appropriate and in the best interest of the minor. An agency or its authorized representative may petition the Juvenile Court for disclosure of any records or information not so disclosed.

- a. City Attorney offices;
- b. Coroner offices;
- c. Child Protective Services;
- d. County Counsel offices;
- e. Probation departments (including their Victim/Witness Assistance programs);
- f. District Attorney offices;



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- g. Family Court Services;
- h. Persons or agencies specified in Penal Code § 11167.5(b);
- i. Federal, state or local law enforcement agencies;
- j. Superior Court judicial officers and their immediate court personnel;

4. The court recognizes that certain agencies need to inspect juvenile court records to accomplish the legitimate goals of the juvenile justice system. Such goals include the need to adequately evaluate an individual minor's background in order to develop a treatment plan, or the need to audit any part of the juvenile justice system to evaluate its operation. To that end, the agencies listed in Rule 56.1(B)(3) above may disclose juvenile records, not otherwise confidential, to the following agencies upon providing the agency holding the juvenile records a declaration under penalty of perjury setting forth the need:

- a. County Mental Health departments;
- b. Department of Motor Vehicles;
- c. Federal, state, county and city auditors;
- d. Public guardian offices; and
- e. Other agencies as authorized in writing by the Presiding Judge of the Juvenile Court, for good cause shown.

5. Law enforcement agencies may disclose to a minor's parent(s) or legal guardian(s), and CPS or County Probation may disclose to a foster parent caring for a minor, such juvenile records of the minor, not otherwise confidential, as the agency deems appropriate and in the best interest of the minor.

6. Mental health records and information of a juvenile may be disclosed to the extent authorized by Welfare & Institutions Code § 5328 (e.g., written parental consent) or 18961 ("multi-disciplinary personnel teams").

7. Law enforcement agencies may disclose information, which is not otherwise confidential, from police reports written by officers of the agency concerning traffic accidents (excluding any driving record report) or incidents of criminal acts alleged to have involved one or more juveniles, to a person or

## FRESNO COUNTY SUPERIOR COURT

entity (or its authorized representative) who was damaged by the accident or who was a victim of the crime. The information is to be released only for purposes of assisting the person or entity in obtaining reimbursement for injuries or damages caused by the conduct of the minor(s). The person to whom the information is released shall agree in writing that the person will not disclose any of the information released to him or her to anyone other than the person's attorney, insurance adjuster, or one legally representing the person's or entity's interest in recovering damages resulting from the incident. The person to whom the information is released shall also agree in writing that the information will be used for no purpose other than as stated above. Any document released pursuant to this paragraph shall be clearly marked "CONFIDENTIAL." It shall state that it is being provided pursuant to this rule, and that any distribution or use other than as allowed herein is a violation of this rule and that the violator may be subject to sanctions. Notwithstanding this rule, if the information identifying any juveniles is deleted, traffic accident reports may also be released to any state or local engineering department for use in the normal scope of the department's duties.

8. Nothing in this rule shall be used to limit disclosure of information as authorized by Welfare & Institutions Code §§ 627, 828, and 829. Additionally, the Fresno County Probation Department is authorized to inspect and utilize those records specified in Welfare & Institutions Code § 504 relating to serious habitual offenders.

9. The documents referenced below may be released to those agencies or individuals as specified herein.

a. CPS is authorized to disclose to the parties and their actual or prospective counsel at a dependency court detention hearing such documents as CPS deems to be appropriate as part of its prima facie statement including, but not limited to, the identity of all persons who reported any allegation of child abuse or neglect (see Penal Code § 11167(d)). If CPS chooses to delete the identification of the reporting party or parties, and a party to the dependency proceeding wants the identification disclosed, then that party may request that the court order such disclosure. The court shall not issue such an order except for good cause shown and only after an in camera review with CPS and/or its attorney of record having an opportunity to be heard.

b. In cases where a minor who has been taken into custody by CPS is abducted, then CPS may provide to the Child Abduction Unit of the District Attorney's office the following documents and information:

- 1) Copies of any law enforcement reports which brought the matter to the attention of CPS;

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2) Copies of the juvenile dependency petition concerning that minor;

3) Copies of all minute orders or other court orders which show the Juvenile Court's jurisdiction over the minor, any knowledge of this jurisdiction by the suspected child abductor(s), and/or any appearance before the court by the suspected child abductor(s);

4) Copies of any warrants or body attachments for the child or suspected child abductor(s);

5) Any addresses, telephone numbers, or other identifying information which could assist the District Attorney's office in locating the child or suspected child abductor(s).

c. Whenever a law enforcement agency has prepared a report referencing one or more juveniles involved in an incident related to school activity or attendance that occurred at any time within the scope of Education Code § 48900, the agency may release that report to a school official or other person authorized to act on behalf of the school, provided that the requesting person declares under penalty of perjury that the information in the report will be used exclusively for purposes of possible suspension, expulsion, or other disciplinary action against one or more minors referenced in the report and/or for seeking restitution under Education Code § 48904.

d. Whenever a juvenile has been assessed a fine or otherwise has been ordered by the Juvenile Court or Juvenile Court Traffic hearing officer to pay monies to the County, the court is authorized to enter into the County of Fresno Automated Court System (COFACS) the name, address, telephone number, social security number, case number, amount ordered to be paid, and such other information as is reasonably necessary for the court and/or the Revenue Reimbursement Division (RRD) of the Auditor-Controller/Treasurer-Tax Collector's Office for the collection of said monies. The court shall take reasonable steps to limit access to this information in COFACS to court and RRD personnel.

10. The court recognizes that state prosecutors need to inspect and disclose certain juvenile court records as necessary to plead and prove prior qualifying juvenile adjudications within the meaning of Penal Code § 667 (commonly known as "Three Strikes"). To that end, a District Attorney of any county of the State of California, or the Attorney General of the State of California, and their agents and employees, are entitled to access any and all

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juvenile court records not previously ordered sealed pursuant to Welfare & Institutions Code § 781, related to a prior qualifying juvenile adjudication within the meaning of Penal Code § 667(d)(3). The District Attorney, Attorney General and their agents and employees are permitted to disclose, without further order of this court, so much of such records as is necessary to plead and prove an accusatory pleading pursuant to Penal Code § 667.

The enactment of Penal Code § 667 constitutes good cause to retain records of juvenile adjudications qualifying under that statute. No such juvenile records shall be routinely destroyed as provided in Welfare & Institutions Code §§ 781(d) and 826(a). Nothing in this rule is intended to limit the right of the person who is the subject of a juvenile court record to petition the court for the destruction of such records.

C. **Petition Procedure.** Anyone seeking to inspect, copy or obtain juvenile records or information or testimony relating thereto, not otherwise specifically provided for by this rule, shall comply with the following requirements.

1. Juvenile records or information possessed by the Department of Children and Family Services or pertaining to a dependent of the court:

a. Before filing the petition, petitioner shall contact Fresno County Counsel and provide the name and date of birth of the minor, and the nature of the records or information sought.

b. Fresno County Counsel will obtain from the Department of Children and Family Services information identifying parties and attorneys, and their addresses for notice. In those cases where there is, or has been, a juvenile court case, the attorneys appointed to represent the parties in that case shall be identified to petitioner.

c. Fresno County Counsel shall provide this information to petitioner, as well as a preliminary indication as to whether there will be opposition by the Department of Children and Family Services to the petition for disclosure.

d. Petitioner shall serve all parties and attorneys with a copy of the completed Petition for Disclosure of Juvenile Court Records (Judicial Council form JV-570). Forms are available from the Juvenile Court Clerk's office.

e. Before filing the petition, petitioner shall make good faith efforts to meet and confer with all parties for the purpose of obtaining a signed stipulation regarding release of the records or information, including any limitations on scope or content of the release. See sample stipulation in Appendix D3.

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f. If all parties sign a stipulation, petitioner shall file the petition and signed stipulation with the Juvenile Court, and serve them upon all parties. The court shall review and consider the petition and stipulation and shall grant or deny the petition, or order the matter to be set for hearing.

g. If a stipulation is not signed by all parties, petitioner shall file the petition with the Juvenile Court, along with a declaration setting forth petitioner's efforts to meet and confer with all parties and the reason or reasons that a stipulation could not be obtained, and serve them upon all parties. The court shall review and consider the petition and declaration and shall grant or deny the petition, or order the matter to be set for hearing.

2. Juvenile records or information possessed by the Probation Department or local law enforcement agencies:

a. Petitioner shall serve the affected juvenile, or the juvenile's attorney if known, and the local law enforcement agency with a copy of the completed Petition for Disclosure of Juvenile Court Records (Judicial Council form JV-570). Forms are available from the Juvenile Court Clerk's office.

b. Before filing the petition, petitioner shall make good faith efforts to meet and confer with all parties for the purpose of obtaining a signed stipulation regarding release of the records or information, including any limitations on scope of content of the release. See sample stipulation in Appendix D3.

c. If all parties sign a stipulation, petitioner shall file the petition and signed stipulation with the Juvenile Court, and serve them upon all parties. The court shall review and consider the petition and stipulation and shall grant or deny the petition, or order the matter to be set for hearing.

d. If a stipulation is not signed by all parties, petitioner shall file the petition with the Juvenile Court, along with a declaration setting forth petitioner's efforts to meet and confer with all parties and the reason or reasons that a stipulation could not be obtained, and serve them upon all parties. The court shall review and consider the petition and declaration and shall grant or deny the petition, or order the matter to be set for hearing.

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3. Upon an order that a hearing be held, the Clerk shall set the hearing within ten (10) court days and cause notice to be served upon all parties, as provided for in California Rules of Court, Rule 1423.

4. Responsive pleadings shall be filed and served no later than two (2) court days prior to the hearing. (Effective July, 1999)

### **RULE 56.2      RELEASE OF RECORDS TO PARTIES AND THEIR ATTORNEYS**

Any party or their attorney in any Welfare & Institutions Code § 300 matter shall be given access to all unsealed dependency records relating to the minor which are held by the Clerk. (Effective January, 1999)

### **RULE 56.3      ACCESS TO COURTROOM BY NON-PARTIES**

Unless specifically permitted by statute, Juvenile Court proceedings are confidential and shall not be open to the general public.

The court encourages interested persons including trainees and students to attend juvenile proceedings in order better to understand the workings of the Juvenile Court. The court retains the discretion to determine in each case whether any such interested party shall remain in the courtroom.

The court or its agent shall remind each such non-party that the names of parties and any actual or potentially identifying information from any case is confidential and shall not be further disclosed to anyone outside of the court.

The court, on its own or at the request of any party, may require a person attending a Juvenile Court proceeding to sign a written agreement or state under oath that he or she will comply with all confidentiality requirements. (Effective January, 1996)

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**RULES 57-69: RESERVED.**

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## VII. PROBATE RULES

### RULE 70: PLEADINGS

#### **RULE 70.1      FORM OF DOCUMENTS PRESENTED FOR FILING IN PROBATE MATTERS**

A. Current Judicial Council forms shall be used where specific forms are available, rather than original pleadings prepared by counsel. If a form is inadequate for a given circumstance, an addendum may be attached to the form.

B. When printed forms are reproduced on the front and back of a single sheet, the back sheet shall be inverted (tumbled) so that it can be read when affixed at the top in a file folder.

C. All parties shall include their FAX telephone number and e-mail address, if available, on all papers.

D. All persons filing in pro per shall file with the court a separate verified declaration regarding his or her residence address, if the residence is not the address of record in the proceeding.

E. The caption of all pleadings must be all-inclusive as to the nature of the pleading and relief sought so that the matter may be properly calendared and noticed and filing fees determined, if any. The caption shall also include reference to the applicable Code section(s). A copy of the face page only of any pleading or other document which causes a hearing to be set shall also be presented at the time of filing.

F. Attorneys are encouraged to use subheadings in the body of the pleading, particularly for required allegations. (Effective July, 2002)

#### **RULE 70.2      TIME FOR FILING PAPERS**

Unless otherwise ordered or specifically provided by law, all petitions with accompanying declarations and exhibits shall be, if appropriate, served and filed at least fifteen (15) calendar days prior to the scheduled hearing.

Proof of service of the petition shall be filed no later than ten (10) calendar days before the time appointed for the hearing. (Effective July, 1995)

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## **RULE 70.3            AMENDMENTS OF PLEADINGS**

Any amended pleading or an amendment to a pleading which potentially may alter the relief to be granted as distinguished from a supplement, requires the same notice as the petition which it amends. (Effective January, 2000)

## **RULE 70.4            OBJECTIONS TO PLEADINGS**

Objections to a petition shall be filed with the Clerk at least five (5) court days prior to the noticed hearing. Copies of objections shall be given to other parties by the most expedient means, such as fax, if possible. (Effective July, 2000)

## **RULE 70.5            SUBSEQUENT DOCUMENTS AND DEPOSITING WILLS**

A.    **Filing of Subsequent Documents.** Subsequent documents relating to matters already set for hearing (including proposed orders in matters anticipated to be uncontested) shall be filed with the Clerk's office at least ten (10) days before the hearing date.

1.    All documents relating to a matter set for hearing shall have the hearing date, time and department set forth on the face of the document.

2.    All documents containing attachments, schedules or exhibits shall be indexed and tabbed at the bottom. Each page shall have page numbers to facilitate review by the Probate Examiner's Office and the court.

B.    **Depositing Wills.** All original wills and codicils must be deposited with the Clerk or be presented with the Petition for Probate.

C.    **Petitions for Probate of Will.** If a will has been previously deposited, the Clerk shall retrieve and file the deposited will when a petition to probate the will is filed, so it may be considered at the hearing. The petitioner shall notify the Clerk if the will has been deposited, and provide sufficient information to enable the Clerk to retrieve it. (Effective January, 2000)

## **RULE 70.6            DEFECTS IN PLEADINGS**

Defects in pleadings or procedure can be cured by counsel providing any additional documents or explanations necessary for approval of the petition to the Probate Examiner's Office at least twenty-four (24) hours in advance of the hearing date. (Effective July, 1995)

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## **RULE 70.7**

### **FILING FEES FOR TESTAMENTARY TRUST ACCOUNTINGS, ETC.**

A testamentary trust is a new action, requiring a new case number and payment of the current new case filing fee. (Effective July, 2000)

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## **RULE 71: PROBATE CALENDAR AND APPEARANCES**

### **RULE 71.1            CALENDAR SETTINGS AND ASSIGNMENTS**

All petitions in probate guardianship and conservatorship matters which require a hearing shall, upon being filed with the court, be set by the Clerk on the regular calendar assignment day. The regular calendar assignment days, unless changed by the Presiding Judge of the Probate Court, shall be Monday through Wednesday at 9:00 a.m. and Thursday at 9:00 a.m. and 10:00 a.m.

Any request for early setting must be approved by the Probate Division Manager and shall be granted only for good cause. (Effective January, 2000)

### **RULE 71.2            CALENDAR ADVANCEMENTS**

When a hearing on a probate matter has been noticed or when it has been noticed and then continued to a definite date, the matter shall not be heard before the date set, whether by means of a new petition, an amended petition, or a new notice. (Effective January, 2000)

### **RULE 71.3            APPEARANCE REQUIREMENTS**

Appearances may be by phone or in person. Phone appearances are governed by Rule 71.4.

If a case has been recommended for approval on the recorded probate "hot line" (559) 488-3294, no appearance is required, however, if an objection is received or the court for any reason does not approve the relief requested, the matter will be continued and a copy of the minute order mailed to the party.

If the case has not been recommended for approval on the "hot line," an appearance is required and in the absence of such appearance the court may take the matter off calendar or dismiss it. (Effective January, 2000)

### **RULE 71.4            TELEPHONIC APPEARANCES**

Any party may appear telephonically with prior notice to the assigned court. "Court Call" [(888) 882-6878], a private vendor, is available in most, but not all, departments. (Effective January, 2000)

### **RULE 71.5            APPROVED MATTERS**

Approved matters are those which have been reviewed and found complete by the Probate Examiner's Office before the date set for hearing and do not contain

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any matters which require discretionary approval by the Probate Judge, such as approval of extraordinary fees.

A copy of the Probate Examiner's notes shall be posted on the bulletin board in Room 402 for the benefit of counsel and petitioners. (Effective January, 2000)

### **RULE 71.6                    CONTINUANCES**

A.     **Regularly Calendared Matters.** On the call of the calendar, matters not ready for hearing shall be continued by the court. The length of continuance shall be determined upon the facts and size of the calendar. A matter is considered not ready for hearing if notices, supplements, or other documentation curing all discrepancies, other than strictly court-determined matters, are not submitted to the Probate Examiner's Office at least twenty-four (24) hours in advance of the hearing date. If the matter is not ready on the continued date, it may be ordered off calendar or may be denied without prejudice unless a request for continuance is granted by the court upon the personal appearance by counsel or the petitioner, if pro per.

B.     **Objections.** The court may continue a matter so that written objections may be filed. Objections shall be filed and served on all interested parties no later than five (5) days prior to the continued hearing date, unless otherwise ordered by the court.

C.     **Limitations on Continuances.** Except for the hearing following the ex parte appointment of a guardian or conservator, the Probate Examiner's office may, upon good cause shown, grant one continuance. Any additional continuances requested for the same purpose as the first continuance may be granted by the Probate Examiners only after prior approval by the Probate Judge.

D.     **Notification of Parties.** A party obtaining a continuance shall notify all parties who have received notice of the hearing by close of business the day prior to the hearing and shall pay the costs of any person who appears who was originally noticed but was not noticed of the continuance. Confirmation of the continuance and method of notification of parties shall be made to the court in a letter prior to the original hearing date.

E.     **Resetting a Matter Taken Off Calendar.** If a petition has been taken off calendar by the court for failure to appear or has been previously taken off calendar at the petitioner's request, the petition may be reset for hearing by filing a Judicial Council form Notice of Hearing identifying the petition to be reset. The form shall specify that it is a "RESET Notice of Hearing" and shall include the original filing date of the petition. Proof of service of the Reset Notice of Hearing shall be filed ten (10) days prior to the hearing date. (Effective January, 2000)

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## **RULE 71.7                    CONTESTED MATTERS**

When written objections to a petition or other pleading seeking affirmative relief are filed, the matter shall become a "contested matter" and shall be referred either to Master Calendar or pursuant to Rule 71.8 below. If all or a portion of the contested issues concern matters of law only, the probate judge will rule on such matters before referral. (Effective July, 2000)

## **RULE 71.8                    SHORT-CAUSE CONTESTED PROBATE MATTERS**

A.     **Statement of Policy.** This reference procedure shall be available to parties in contested probate matters that are expected to be resolved in a hearing of three (3) hours or less, except that this procedure shall not be available for custody disputes in guardianships or proposed guardianships. This procedure is authorized by Probate Code § 2405(a) (guardianships/conservatorships), Probate Code § 9620(a) (decedents' estates), and Code of Civil Procedure § 638 (trusts and other disputes).

B.     **Agreement.** Parties wishing to use this procedure must first enter into a written agreement. The agreement shall be signed by both parties and be in the form available from the Probate Filing Clerk.

C.     **Selection of Temporary Judge.** The Probate Court shall maintain a list of local probate attorneys eligible to act as temporary judges under this procedure. This list is also available on the court's website. Temporary judges shall be selected by the Probate Judge from among those attorneys practicing in Fresno County who:

1.     Have at least five years experience as an attorney in California probate matters;
2.     During the last five years have spent on average at least 25% of their practice time in the areas of probate and trust administration and estate planning; and
3.     Have volunteered to be available as a temporary judge and have submitted an application to the Probate Court in the form available from the Probate Filing Clerk.

When the court determines that the contested matter is suitable for reference to a temporary judge under this procedure, the judge shall select three (3) attorneys from the list of volunteers. If the parties cannot stipulate as to the selection of one of the three attorneys as temporary judge, each party may exclude one such attorney. In that case, the attorney who has not been excluded will then be appointed by the court to serve as the temporary judge. In the event this procedure fails, the temporary judge shall be selected by stipulation of the parties or by the court.



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Every temporary judge shall, as soon as practicable, disclose to the parties any facts that might reasonably cause any party to entertain a doubt that the temporary judge would be able to be impartial. A temporary judge who has been privately compensated in any other proceeding in the past eighteen (18) months as an attorney, judge, referee, arbitrator, mediator, settlement facilitator, expert witness, or consultant by a party, attorney, or law firm in the instant case shall disclose the number and nature of such other proceedings at least fourteen (14) days before the hearing date. If the temporary judge does not disqualify himself or herself upon the request of any party, that party may seek to disqualify the proposed temporary judge under Code of Civil Procedure §§ 641 and 642.

D. **Compensation of Temporary Judge.** The temporary judge shall be compensated \$150.00 per hour for time spent adjudicating the matter in his or her presence, plus time preparing for the hearing and preparing the decision. Compensated time for preparation and decision-writing shall be limited to one (1) hour or a time period equal to the duration of the hearing, whichever is longer. However, parties may stipulate, with the agreement of the temporary judge, for a longer (more than three hours) hearing and/or more time of the temporary judge. Absent such a stipulation, the temporary judge's compensation shall not exceed \$900.00. Compensation costs shall be shared equally by all parties, unless they all agree otherwise or unless otherwise ordered by the court. A deposit equal to the estimated compensation (no less than \$300.00) shall be paid to the temporary judge before the hearing. Final payment (if the deposit is insufficient) shall be made before the temporary judge renders his or her decision.

E. **Procedure.** The signed agreement and proposed order, substantially in the form available from the Probate Filing Clerk, shall be submitted to the court at or before the time the matter is on the probate calendar. The agreement and order will be signed by the Probate Judge, and filed. At the hearing, the Probate Judge will ordinarily set a status hearing for approximately three (3) months later, which will be taken off calendar if the temporary judge's decision is filed before the status hearing. The parties shall confer with the temporary judge to set a hearing, which shall be within sixty (60) days after the reference date. Not less than seven (7) days before the hearing date, briefs in the format described in Appendix E3 shall be submitted to the temporary judge. Each party or his or her attorney is required, before the submission of the brief, to meet and confer with the other parties to prepare a Joint Document Binder containing documents relevant to the resolution of the dispute. The Joint Document Binder shall be completed at least fourteen (14) days before the hearing date. If there are any unresolved issues relating to documentary evidence, they must be described in the brief for determination by the temporary judge. No other pleadings shall be allowed. No discovery shall be permitted, unless all the parties stipulate otherwise.

At the reference hearing, each party will have the opportunity to present his or her case, to cross-examine the other party and witnesses, and to present rebuttal

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testimony and argument. Declarations under penalty of perjury shall be admissible only on stipulation of all parties. Any witnesses must appear voluntarily, because there is no authority to subpoena them. All parties are required to attend the reference hearing in person. The temporary judge may actively participate in the hearing.

After all parties have had the opportunity to present their cases, the matter will be deemed submitted and the temporary judge will issue a decision within twenty (20) days after testimony is closed, which shall comply with Code of Civil Procedure § 632. Any party may file the decision with the Clerk, and judgment may be entered thereon (Code of Civil Procedure § 644). (Effective July, 2001)

### **RULE 71.9                    ADMINISTRATION OF PROBATE ESTATE PROCEEDINGS**

A.     **Statement of Policy.** It is the policy of the court to assure that decedents' estates are distributed without unnecessary delay and that accountings in guardianships and conservatorships are timely filed. It is the policy of the court to take an active role in the management of probate proceedings.

B.     **Extensions.** For good cause the court may grant an extension to file an inventory and appraisal. An ex parte petition for extension may be considered if a copy of the petition for extension has been sent to all interested parties and the petition states a date certain on which the inventory and appraisal will be filed.

The court may consider as grounds for an extension of time to file a petition for final distribution the fact that a federal estate tax return is required and/or is under audit or examination. An extension to file a petition for final distribution does not relieve the personal representative's duty to file reports of status of administration.

C.     **Status Hearings.** Status hearings may be set as follows:

1.     **Decedents' Estates.** In the event that the personal representative fails to timely file a petition for distribution or a report of status of administration, the court on its own motion may set a status hearing requiring the appearance of the personal representative and the personal representative's attorney. The date set for a status hearing will not be a date available for hearing on a petition for distribution filed thereafter.

The attorney and personal representative shall appear at the status hearing either personally or telephonically (see Rule 71.4 re telephonic appearances). Failure to appear at a status hearing may result in sanctions and/or the issuance of an Order to Show Cause re Contempt.

Status hearings, once set, shall be continued periodically by the court until the petition for final distribution is filed, at which time the status hearing

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will be taken off calendar. A petition for preliminary distribution shall not be sufficient to cause the status hearing to be taken off calendar.

2. **Guardianships and Conservatorships.** In the event that the guardian or conservator fails to file an annual or biennial account when due, the court on its own motion may set a status hearing requiring the appearance of the guardian or conservator and/or the attorney for the guardian or conservator. The date set for a status hearing will not be a date available for hearing on an annual or biennial account filed thereafter.

The attorney and guardian or conservator shall appear at the status hearing either personally or telephonically (see Rule 71.4 re telephonic appearances). Failure to appear at a status hearing may result in sanctions and/or the issuance of an Order to Show Cause re Contempt.

Status hearings, once set, shall be continued periodically by the court until the accounting is filed, at which time the status hearing shall be taken off calendar.

D. **Status Reports.** Status reports shall be filed as follows:

1. **Decedents' Estates.** At least ten (10) days prior to the status hearing, a status report shall be filed which shall be verified by the personal representative. Notice of hearing of the report shall be given in the form required by Probate Code § 12201(b) to persons then interested in the estate. The status report shall address the issues before the court, including the estimated time needed to complete the administration of the estate. Failure to file a status report may result in sanctions.

An updated status report shall be filed at least ten (10) days prior to each subsequent status hearing, with notice given to interested persons as set forth above. If a petition for final distribution is filed after a status hearing has been set or continued, a status report is not required. However, the attorney and/or personal representative shall advise the Probate Filing Clerk in writing at the time the petition for final distribution is filed that a status hearing is pending and the date of the status hearing.

2. **Guardianships and Conservatorships.** At least ten (10) days prior to the status hearing, a status report shall be filed which shall be verified by the guardian or conservator to advise the court why the required accounting has not been filed and the estimated time needed to complete and file the accounting. Notice of hearing, together with a copy of the status report, shall be sent to persons entitled to notice of hearing of the accounting pursuant to Probate Code § 1460, et seq. Failure to file a status report may result in sanctions.

## **FRESNO COUNTY SUPERIOR COURT**

An updated status report shall be filed at least ten (10) days prior to each subsequent status hearing, with notice and a copy of the status report sent to persons entitled thereto, as set forth above. If the accounting is filed after a status hearing is set or continued, a status report is not required. However, the attorney and/or guardian or conservator shall advise the Probate Filing Clerk in writing at the time the accounting is filed that a status hearing is pending and the date of the status hearing. (Effective January, 2000)

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## **RULE 72: NOTICES**

### **RULE 72.1      DIRECT NOTICE**

Except as otherwise provided in these rules and in the Probate Code, notice must be mailed either to the residence of the person entitled to notice or, if such person has another address at which such person otherwise regularly receives mail, then to such address. In all instances where notice is mailed to an address other than the person's residence or other regular mailing address, a verified statement is required from the petitioner which explains why an alternate address was used.

Generally, notice mailed to a person "in care of" a second person will not be sufficient unless: (i) the person entitled to notice is an adult and has directed the petitioner in writing to send notice in care of the second person, in which case a copy of the written direction should be filed, or (ii) a written declaration is filed stating specifically what efforts were made to locate the person. (Effective July, 1995)

### **RULE 72.2      NOTICE TO MINORS**

When a minor is entitled to notice, notice shall be sent directly to the minor and not to the minor "in care of" a parent. A copy of the notice shall also be mailed to the minor's parents or guardian. In order for the court to waive notice to a minor under the age of 12 years, a declaration supporting an exception(s) found in Probate Code § 1460.1 must be filed. (Effective January, 2000)

### **RULE 72.3      NOTICE IN GUARDIANSHIPS AND CONSERVATORSHIPS**

A petition for general letters of guardianship or conservatorship must allege any information bearing on notice to be given not only to the proposed conservatee or minor, age twelve (12) or older, but also to all others entitled to notice of hearing. Reasons for dispensing with statutory notice must be specifically alleged. If an order dispensing with notice is sought on the ground that the whereabouts of the person entitled to notice are alleged to be unknown, a declaration showing reasonable efforts to locate such person must be filed. In appropriate circumstances, the court may require publication or other notice reasonably calculated to give actual notice to such person.

The attorney for the petitioner (or, if pro per, the petitioner) shall be responsible for all notices required pursuant to the Probate Code and these rules including requests for special notice. A copy of the petition shall accompany each notice of hearing.

If there are no relatives within the second degree the petition shall contain that allegation. If there are relatives who otherwise would be within the second

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degree but are deceased, the petition shall list the names and relationship of such persons and that they are “deceased” and shall state the approximate date of death, if known. (Effective January, 2000)

### **RULE 72.4            NOTICE TO GUARDIANS AND CONSERVATORS**

When a guardian or conservator has been appointed for the person entitled to notice, notice shall be given directly to the conservator or guardian in addition to any notice required to be given to the conservatee or ward. (Effective July, 1995)

### **RULE 72.5            ADDITIONAL NOTICE REQUIREMENTS**

Under the provisions of the Probate Code, the court may require additional notice in any matter. Ordinarily, such notice will be required whenever it appears that the interests of any person may be adversely affected by the determination of the issues raised in the petition. (Effective July, 1995)

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## **RULE 73: ORDERS**

### **RULE 73.1            SUBMISSION OF ORDERS**

Orders must be submitted to the Probate Examiner's Office ten (10) days prior to the hearing. Failure to submit a proposed order will preclude the matter from review by an examiner, will result in a continuance by the Probate Judge, and may give rise to sanctions. (Effective July, 2002)

### **RULE 73.2            FORM OF ORDERS**

All orders or decrees in probate matters must be complete in themselves, in that they shall set forth all matters actually passed on by the court, the relief granted, the names of persons, descriptions of property and/or amounts of money affected with the same particularity required of judgments in general civil matters.

No riders or exhibits may be attached to any order, except as may be otherwise provided on Judicial Council forms.

All orders distributing property and orders settling accounts shall also contain a statement as to the balance of the estate on hand, specifically noting the amount of cash included in the balance.

Probate orders shall be drawn so that their general effect may be determined without reference to the petition on which they are based.

In no case shall any material appear after the signature of the judge.

Some portion of the contents of the order must appear on the page upon which the judge's signature is affixed. (Effective July, 2000)

### **RULE 73.3            OBTAINING APPROVED ORDERS**

Uncontested matters may be approved by the court at the time noticed for hearing and a signed order made immediately available to appearing counsel for immediate filing with the Probate Filing Clerk. The Clerk will return one (1) endorsed filed copy of the order to counsel at the time the order is presented for filing. The proposed order must have been submitted to the Probate Examiner's Office for prior review, in accordance with Rule 73.1. No original signed order may be taken from the courthouse. (Effective July, 2000)

### **RULE 73.4            ORDERS CORRECTING CLERICAL ERRORS**

If, through inadvertence, the signed order fails to state the order actually made by the court, and such inadvertence is brought to the attention of the court by



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appropriate declaration or affidavit, the court will consider it a request for an order correcting the mistake which will relate back to the date of the original order (nunc pro tunc).

If the nunc pro tunc order does not take the form of a completely amended order, it shall be substantially in the following form: "Upon consideration of the affidavit or declaration of (name of affiant or declarant) to correct a clerical error, the (title and date of mistaken order) is corrected by striking the following: (incorrect sentence or paragraph) and by substituting the following: (correct sentence or paragraph)."

A complete sentence or paragraph shall be stricken, even if it is intended to correct only one word or a single figure. Reference shall be made to page and line numbers of the order being corrected. (Effective January, 1998)

### **RULE 73.5            EX PARTE ORDERS**

All ex parte petitions which do not require advance notice must first be presented to the Probate Examiner's Office for review before being presented to the court. If advance notice is required, the ex parte petition shall be submitted on the regular civil ex parte calendar. The Probate Court does not maintain any regular ex parte hours.

A list of all requests for special notice must accompany the application or the application must contain an allegation that no special notice has been requested. If special notice has been requested, a waiver must accompany the application.

Since no testimony is taken in connection with ex parte applications, the application must contain facts sufficient to justify granting the prayer. The facts stated in each declaration shall be set forth with particularity. Each declaration shall show affirmatively that the declarant can testify competently to the facts stated therein. The declarant may be any person who has knowledge of the facts. The application and declarations must be verified.

All ex parte applications shall be accompanied by a separate order complete in itself. It is not sufficient for such an order to provide merely that the application has been granted, or that the sale of property as set forth in the application has been approved.

All ex parte orders may be set aside ex parte upon a showing of a proper reason. (Effective January, 2000)

### **RULE 73.6            ORDERS TO ISSUE CITATIONS**

Upon the filing of a petition where a citation may be issued as ordered by the court, the attorney for the petitioner shall present to the court an ex parte

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application and order directing the Clerk to issue a citation. The attorney must prepare the citation, requiring the person cited to appear personally and to show cause why the petition should not be granted. (Effective January, 2000)

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## **RULE 74: BLOCKED ACCOUNTS AND BONDS**

### **RULE 74.1            GENERAL PROVISIONS**

A.     **Notice and Hearing.** A petition seeking to deposit funds or securities into a blocked account in a financial institution or trust company may be granted by the court ex parte.

B.     **Title to Account.** The order as well as the title to the blocked account shall show the name of the minor, conservatee, or estate and shall state that the account is "blocked" and that no withdrawals of principal or interest shall be made without the prior written order of the court.

C.     **Account Requirements.** All deposits into blocked accounts shall be into federally insured, interest bearing accounts having no maturity date, or accounts authorized under Probate Code §§ 2574 or 9730, as appropriate, unless otherwise ordered by the court.

D.     **Maximum in Blocked Accounts.** The maximum initial deposit into any one (1) blocked account shall be 90% of the maximum federal deposit insurance amount. In no event shall more than the maximum insured amount be held in any one federally insured depository. If it becomes necessary to transfer funds to an additional federally insured depository to comply with this rule, a request to transfer such funds may be submitted to the court on ex parte application, and the transfer shall be by an interbank or other direct transfer transaction and not by withdrawal of funds and transfer unless otherwise approved or ordered by the court.

E.     **Depository Receipts; Sanctions.** All receipts of depositories shall state that the account is "blocked - No withdrawals of principal or interest shall be made without the prior written order of the court." Such receipts shall be signed by an officer of the financial institution or trust company accepting the deposit and filed by the fiduciary within fifteen (15) days from the date of receipt of the deposit, using the form "Receipt of Depositor of Order to Deposit Money into Blocked Account" which may be obtained from the Probate Filing Clerk. If the receipt has not been filed within forty-five (45) days of the order, the fiduciary shall file a written explanation with the court stating the reason the receipt has not been filed, when the fiduciary expects the receipt to be filed, and requesting an extension of time until that date. In the event the receipt is not filed within the above time periods and no extension of time has been granted, the fiduciary will be cited to appear before the court. In addition to the court's other remedies, sanctions pursuant to the Code of Civil Procedure may be imposed if funds are not deposited as required.

F.     **Separate Petitions and Blocked Accounts for Each Minor.** A separate petition shall be filed for each minor whose funds are to be deposited into

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a blocked account. A separate blocked account shall be established for the funds of each minor.

G. **Withdrawals**. Withdrawals from a blocked account may be requested by ex parte application using the form entitled "Application and Order to Withdraw Funds" which may be obtained from the Probate Filing Clerk. In all cases, sufficient documentation to support the requested withdrawal must be submitted with the application, including copies of bills, statements, or letters related to the request.

The court in its discretion may require a noticed hearing, even if the request to withdraw funds is submitted ex parte.

If the withdrawal is granted, the order shall provide that payment will be made directly to the vendor or service provider and not to the applicant, unless the withdrawal is for reimbursement of an expense already paid by the applicant.

One (1) certified copy of the Application and Order to Withdraw Funds will be issued by the Clerk. Within fifteen (15) days after the date of the order, the applicant shall file a Certificate of Compliance showing that the terms of the order have been complied with and that the monies have been used only for the purposes set forth in the application. Copies of receipts showing payment shall be attached to the Certificate of Compliance. (Effective January, 2000)

### **RULE 74.2            WITHDRAWALS FROM MINOR'S ACCOUNT DURING MINORITY**

See Rule 74.1(G) above for general provisions regarding withdrawals from blocked accounts.

Except for withdrawals to pay taxes on a minor's funds, requests for withdrawal will ordinarily not be granted if either or both parents are living and financially able to pay the requested expenditure. An application to withdraw funds to pay income taxes on the minor's funds shall include a breakdown of state and federal taxes due and any costs of preparation. An application to withdraw funds for purposes other than payment of taxes shall be accompanied by a financial declaration by the parents or a parent describing their income and expenses and, if applicable, other circumstances justifying withdrawal. A statement regarding the minor's employment and income, if any, shall also be attached. If the request is for multiple items, each item must be specified together with the unit cost.

If a withdrawal is requested for the purchase of a car, a copy of the proposed purchase/sale agreement shall be attached to the application showing the type of car, year, purchase price, and whether payment will be made in full or in specified installments. A binding agreement shall not be entered into before obtaining a court order because the application may be denied. In addition, a casualty insurance quote shall be attached to the application showing that the public liability coverage

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is for limits of at least \$100,000.00 per person and \$300,000.00 per accident or policy limits equal to the funds which will remain on deposit after the purchase, whichever is greater, and that the application shall contain an explanation of who will pay for the insurance. A copy of the minor's current report card; a statement as to who will pay for the automobile's maintenance; and a statement of the current availability of public and alternate transportation shall also be submitted.

If the request for withdrawal pertains to medical or dental care, including orthodontal care, or an accident or other casualty, a statement from the doctor, dentist or orthodontist regarding the need for the treatment to be performed and the cost of the treatment shall be submitted, together with an explanation by the applicant why the expense is not covered by insurance.

Requests to pay for educational or recreational programs must include a statement as to the necessity or appropriateness of the program and information describing the program. (Effective January, 2000)

### **RULE 74.3                    WITHDRAWAL OF FUNDS FOR FORMER MINOR NOW 18 YEARS OR OLDER**

It is the policy of this court not to approve a request for payment by a depository to the minor upon reaching the age of majority without further court order. On application for withdrawal of the funds by the guardian or the former ward, the court may issue its order for withdrawal of the funds from the depository and authorizing payment directly to the former ward upon receipt of the application accompanied by:

1.     An updated saving passbook or statement showing all entries since the account was opened, and
2.     A copy of the former minor's birth certificate. (Effective January, 2000)

### **RULE 74.4                    EXECUTOR AND ADMINISTRATOR BONDS**

Where a bond is not waived, or the proposed personal representative is a non-resident of the State of California, the petition must state the character and estimated value of the estate property and its probable income.

When a personal representative seeks full powers under the Independent Administration of Estates Act, the amount of any bond required shall be based on the total of the estimated value of the decedent's interest in real and personal property subject to estate administration, less any liens or encumbrances, plus estimated annual income from all sources. If the personal representative requests limited powers under the Independent Administration of Estates Act, the value of real property shall not be included in the amount of the bond.

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If a devisee is a living trust, the acting trustee may waive bond. All waivers shall be in writing and attached to the petition for appointment of a personal representative or filed with the court prior to the hearing on the petition for appointment.

The court will ordinarily require a non-resident personal representative to post bond, even if the will waives bond, unless all beneficiaries waive bond. If the non-resident personal representative is also a beneficiary of the estate, the amount of the bond may be reduced by the amount or percentage of the estate which the personal representative is entitled to receive. (Effective July, 2002)

### **RULE 74.5            INCREASE OR DECREASE IN AMOUNT OF BOND**

When it appears to the court that the bond of any fiduciary is insufficient, the amount of the bond shall be increased at the discretion of the court. However, fiduciaries and counsel are advised that it is their responsibility to see that the bond amount is sufficient pursuant to California Rules of Court, rule 7.204 and 7.501. (Effective July, 2000)

### **RULE 74.6            REDUCTION OF BOND BY DEPOSIT OF ASSETS INTO BLOCKED ACCOUNT**

If the court approves an order requiring no bond because all of the assets of the estate are deposited in blocked accounts, the order appointing the fiduciary or the order authorizing no bond and the letters issued to the fiduciary must state that the fiduciary is not authorized to take physical possession of money or other property without specific court order. (Effective January, 2000)

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## **RULE 75: SUMMARY PROCEDURES**

### **RULE 75.1      SPOUSAL PROPERTY PETITIONS**

In addition to the allegations required by the Probate Code, a Spousal Property Petition seeking determination and/or confirmation of property alleged to be community or quasi-community property, shall contain factual allegations sufficient to establish the community or quasi-community nature of such property.  
(Effective January, 2000)



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# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 76: APPOINTMENT OF EXECUTORS AND ADMINISTRATORS**

### **RULE 76.1            SPECIAL ADMINISTRATORS**

All petitions for letters of special administration must be presented to the Probate Examiner's Office before being presented to the court. Such petitions ordinarily will not be granted without notice to the surviving spouse, the nominated executor, and any other person who appears to be equitably entitled to notice. If it appears that a bona fide contest exists, the court will consider the advisability of appointing a neutral person or corporate fiduciary as special administrator. (Effective July, 2000)

### **RULE 76.2            ALLEGATIONS CONCERNING HEIRS OR DEVISEES**

All heirs and devisees, contingent devisees and persons named in the will, regardless of changes made in a subsequent codicil, shall be listed in the petition and shall be sent notice by mail of the hearing. (Effective January, 2000)

### **RULE 76.3            PUBLICATION OF NOTICE OF PETITION TO ADMINISTER AN ESTATE**

If the decedent resided or owned property in Fresno County, publication shall be made in one of the approved newspapers listed in Appendix E4.

The publication of the Notice of Petition to Administer Estate is sufficient notice of all wills or codicils which are offered for probate and filed with, and specifically referred to in, the petition. Wills or codicils not specifically referred to in the petition must be presented to the court in an amended or subsequent petition and a new Notice of Petition to Administer Estate must be published. Where the will has been admitted to probate, no new or additional publication of the Notice of Petition to Administer Estate is required upon the filing of a subsequent petition for letters testamentary or letters of administration with will annexed. (Effective January, 2000)

### **RULE 76.4            MULTIPLE REPRESENTATIVES**

When multiple representatives are appointed, the Probate Filing Clerk shall not issue letters individually. The letters issued shall name all personal representatives and shall be signed by all personal representatives. (Effective July, 1998)

### **RULE 76.5            STATEMENT OF DUTIES AND LIABILITIES**

The birth date and driver's license number, if any, of a personal representative (other than public officers or trust companies) shall be provided in the receipt of acknowledgment of duties and liabilities as required by Probate Code § 8404. These numbers shall be kept confidential and shall not be made available for public inspection without a court order. (Effective January, 1998)

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## **RULE 76.6**

## **REMOVAL OF PERSONAL REPRESENTATIVE**

Upon the filing of a petition for removal of a personal representative pursuant to Probate Code § 8500, et seq., the attorney for the petitioner shall cause a citation to be issued and personally served, as required by Rule 73.6 above, directing the personal representative to appear before the court and to show cause why the petition should not be granted and letters revoked. (Effective July, 1998)

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## **RULE 77: INDEPENDENT ADMINISTRATION OF ESTATES**

### **RULE 77.1      USE OF INDEPENDENT ADMINISTRATION OF ESTATES ACT**

Authority to administer the estate under the Independent Administration of Estates Act may be revoked upon petition of an interested person or on the court's own motion upon a showing of good cause.

Independent Administration of Estates Act may be used to handle appropriate routine actions. However, such policy is not intended to discourage the personal representative from using a noticed hearing procedure if desirable. (Effective January, 2000)

### **RULE 77.2      NOTICE AND PUBLICATION REQUIREMENTS**

If the request for authority to administer the estate under the Independent Administration of Estates Act is made in a petition for appointment, publication and notice of the hearing must specifically refer to the request for such authority. (Effective January, 2000)

### **RULE 77.3      NOTICE OF PROPOSED ACTION**

A Consent to Proposed Action signed by the beneficiaries, whether part of the Notice of Proposed Action form or separate, need not be filed with the court. (Effective January, 2000)

### **RULE 77.4      FINAL REPORT**

All Notices of Proposed Action must be filed with the court together with the proof of service. (Effective July, 2000)

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## **RULE 78: CREDITOR'S CLAIMS**

### **RULE 78.1            NOTICE TO CREDITORS**

The notices with a cover sheet shall be filed with the Probate Filing Clerk, regardless of whether a claim was later filed, and disposition shall be set forth in the accounting accompanying the petition for final distribution. See *Tulsa Professional Collection Service, Inc. v. Pope* (1988) 103 S.Ct. 1340.

If the personal representative has no reason to believe that the decedent or the decedent's predeceased spouse received health care under the Welfare & Institutions Code, that fact shall be averred in the petition for final accounting and distribution. (Effective January, 2000)

### **RULE 78.2            FILING, APPROVAL, REJECTION AND PAYMENT OF CLAIMS**

A.    **Report on Status of Claims.** Any petition for final distribution shall report on the status of all claims filed.

B.    **Vouchers or Receipts -- When Required.** If the creditor's claim is properly itemized and the personal representative has approved it, the court will generally not require vouchers or receipts to be attached, except in the following instances:

1.    When it is the claim of the representative or the attorney for the estate;
2.    When requested by the court.

C.    **Claims of Personal Representatives and Attorneys.** A creditor's claim of the personal representative or attorney shall be noted in the title of the Judicial Council form. Such a claim shall be presented to the court for approval or rejection notwithstanding the provisions of the Independent Administration of Estates Act. The personal representative shall submit the claim to the court together with the Judicial Council form for Allowance or Rejection of Creditor's Claim, which shall be completed and signed by the personal representative. When there is more than one personal representative, a creditor's claim submitted by one of the personal representatives shall indicate, on an attachment to the claim, whether or not it was approved by the other personal representative(s)

Claims for more than \$1,000.00 based on personal services rendered to the decedent will not be approved by the court without either a hearing or written consent of the residuary beneficiaries of the estate. (Effective July, 2000)

### **RULE 78.3            EXPENSES OF ADMINISTRATION DISTINGUISHED --**

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## **FUNERAL EXPENSES**

In approving creditor's claims for funeral and related expenses, the court will consider the ruling in *Estate of Malgor* (1947) 77 Cal.App.2d 535, when unreasonably large claims are presented. When interest has been paid in connection with the delayed payment of a claim for the reasonable cost of funeral expenses, a specific allegation must be made in the report accompanying the account and which credit for such payment has been taken, setting forth reasons for the delay in payment. The court may not allow credit for payment of interest where the delay in payment of the claim is not justified by the facts set forth. (Effective January, 2000)

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## **RULE 79: MISCELLANEOUS PETITIONS**

### **RULE 79.1            FAMILY ALLOWANCE**

All petitions for family allowance must show that the allowance is necessary and reasonable, including:

1.        The nature and separate or community character of the probate estate and whether or not the estate is likely to be solvent;
2.        All other persons who are entitled to a family allowance;
3.        The approximate needs of the intended recipient, with reference to their standard of living; and the intended recipient's income from other sources.

All orders for family allowance shall be for a specified time period. If the order is based upon an ex parte petition, family allowance will normally not be granted for a period of more than six (6) months.

Before an inventory is filed, an order for family allowance may be modified ex parte or on a noticed hearing, provided that if such petition is ex parte and the petitioner is not the personal representative, notice of such ex parte proceeding must be given to the personal representative. (Effective January, 2000)

### **RULE 79.2            PROBATE HOMESTEADS**

A petition for order setting apart probate homestead shall contain the following information:

The name and current residence address of the surviving spouse and of all surviving minor children.

The date of birth and age of each surviving minor child.

The dates of filing of all inventories, supplemental inventories, and amended inventories.

As to the property in which the homestead is sought: Its legal description (or identifying data in the case of personal property); its common address (or location); the nature of the property (single family residence or other); whether it is community, quasi-community, or separate property of the decedent; whether any third party has an interest or claim thereto; whether it is specifically devised or bequeathed and, if so, to whom; its appraised value; the nature, amount, and basic details concerning all encumbrances; the period of time during which it has been (if it has) the principal



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residence of the person or persons on whose behalf the homestead is sought; and any other facts which will assist the court in determining that the property is the most appropriate to be set aside.

The period of time for which the homestead is sought.

The needs of the surviving spouse and minor children, including a statement of what other residential facilities, if any, are available to them; whether the surviving spouse has remarried; whether the minor children are in the care and custody of someone other than the surviving spouse.

The needs of the heirs or devisees of decedent.

The intent and estate plan of decedent, if any, and how such was manifested.

A summary statement of the amount and status of claims against the estate, including the extent to which liquid assets, and other non-exempt assets are available to satisfy claims and specific cash bequests. (Effective July, 1995)

### **RULE 79.3                    PETITIONS FOR INSTRUCTIONS**

The court is without power to instruct the manner in which an estate should be distributed. This can be done only on distribution or by a petition to determine entitlement (*Estate of Thramm* (1945) 67 Cal.App.3d 657).

Except as provided in Probate Code § 9860 et seq., ordinarily the Probate Court is without jurisdiction to try title to property as between the estate and other parties. Therefore, on a petition for instructions pursuant to Probate Code § 9611, the Probate Court cannot instruct the personal representative that specific property is not the property of the estate and should be delivered to a specified person.

The petition should either set forth the requested instruction and a description of the reasons why the instruction is necessary, or set forth alternatives and the anticipated results of taking action under each listed alternative.

In addition to notice under Probate Code § 1220, the court may require notice to each person whose interest in the estate may be affected by the action which is the subject of the petition. In such circumstances, an order prescribing notice should be requested.

A proposed order shall be submitted at least ten (10) days prior to the hearing, notwithstanding that the petition for instructions may set forth alternative actions. (See Rule 73.1 above.) In such a situation, the proposed order should include the instruction or action which the personal representative desires the court to authorize. (Effective January, 2000)

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## **RULE 79.4                    PETITION TO OPERATE BUSINESS**

**Unincorporated Business Operated as a Proprietorship.** The court may require that notice be given to the five (5) largest creditors of the business if it is proposed that the personal representative continue the operation of the business. The petitioner may request an appropriate order prescribing notice. (Effective January, 2000)

## **RULE 79.5                    REQUESTS FOR ABATEMENT OF PETITIONS TO DETERMINE TITLE TO PROPERTY (PROBATE CODE §9860 ET SEQ.)**

Any request for abatement of a petition on grounds that a civil action is pending shall include a report on the status of the pending civil action. (Effective January, 2000)

## **RULE 79.6                    PETITIONS CONCERNING INTERESTS IN REAL PROPERTY TERMINATED BY DEATH**

Petitions to establish the fact of death of any person whose interest in real property is terminated by his death shall have attached as an exhibit an original or a certified copy of the instrument which created the interest sought to be terminated. If a certified copy of the instrument is attached to the petition as an exhibit, the original instrument need not be offered in evidence.

If the fact of death has not previously been established, a certified copy of the death certificate shall be attached as an exhibit to the petition. (Effective July, 1995)

## **RULE 79.7                    EX PARTE ORDER ESTABLISHING FACT OF DEATH**

A. The court can make an ex parte order establishing fact of death of a joint tenant or life tenant if the petitioner executes an affidavit or declaration stating that the petitioner has no reason to believe that there is any opposition to, or contest of, the petition. The order can be obtained ex parte if the petition is accompanied by:

1. An affidavit or declaration by petitioner that petitioner has no reason to believe that there is any opposition to, or contest of, the petition;
2. A certified copy of the death certificate;
3. A copy of the deed or other document that created the joint tenancy or life estate; and
4. The proposed order.

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B. Petitions not accompanied by these documents must be set for hearing in accordance with the appropriate Probate Code section. (Effective July, 1995)

### **RULE 79.8            ENTITLEMENT TO ASSETS**

Petitions to determine entitlement to estate assets shall provide for a complete resolution of issues raised by the pleadings, a complete disposition of the estate property and may include a request for interpretation of the will. If there is an issue of relationship involved, the petition shall include a genealogical chart showing the relationships of the interested parties to the decedent. If a determination of entitlement to distribution is sought in a petition for distribution, notice shall be given in the same manner as required for a petition to determine entitlement. (Effective January, 2000)

### **RULE 79.9            PETITION TO ESTABLISH FACT OF DEATH**

A petition to establish fact of death must be filed in the name of the deceased person.

A petition to establish fact of death may be included with a petition for probate; however, for convenience of administration attorneys are encouraged to file a separate petition.

If real property is affected, a copy of the document showing the decedent's interest must be attached to the petition, or the petition must set forth the entire instrument vesting title, including the recordation information. If personal property is affected, the location and description of the property and the decedent's interest therein must be set forth with particularity.

The court will not set attorney fees in proceedings to establish fact of death, however, an extraordinary fee may be awarded in a probate proceeding involving a surviving joint tenant or remainder interest. (Effective July, 1995)

### **RULE 79.10            PROCEEDINGS TO ESTABLISH RECORD OF BIRTH OR DEATH UNDER THE HEALTH & SAFETY CODE**

Petitioner shall present an ex parte application together with an endorsed filed copy of the verified petition to the Probate Examiner for an order prescribing notice and setting hearing date. The application shall be in declaration form, and shall set forth the names and addresses of interested parties, including the parents, spouse, issue and siblings of the person whose death or birth the petition is seeking to establish, so far as known after diligent inquiry. (Effective January, 2000)

# FRESNO COUNTY SUPERIOR COURT

## RULE 79.11

### **PETITIONS UNDER CALIFORNIA UNIFORM TRANSFERS TO MINORS ACT**

In any proceeding involving appointment of a custodian or a successor custodian under the California Uniform Transfers to Minors Act, the court will normally require a bond unless (i) the original transferor specifically waives a bond with respect to the designated custodian or successor custodian, or (ii) the custodian or successor custodian is a trust company. The amount of such bond shall be as determined under Probate Code sections dealing with guardianships and decedent estate administration, however; the bond may be reduced upon application to have assets placed in a blocked account. (Effective July, 1995)

## RULE 79.12

### **MOTION TO WITHDRAW AS ATTORNEY OF RECORD**

A. Upon the filing of a motion to withdraw as attorney of record for a guardian, conservator, or personal representative, the attorney shall cause a citation to be issued and personally served prior to the hearing, as set forth in Rule 73.6 above, directing the client to appear before the court to show cause why the motion should not be granted.

B. All motions or petitions to withdraw as counsel must contain an affidavit or declaration stating the client's last known address and telephone number. The order approving the withdrawal must also contain the client's last known address and telephone number. Whenever the affidavit or declaration shows the counsel is unable to locate the client, after making diligent effort, the client must be served in a manner reasonably calculated to give actual notice to the client.

C. Motions for withdrawal of the attorney made on the basis of non-cooperation of the personal representative, conservator or guardian require service of notice of hearing and a copy of motion or petition by mail as follows:

1. In decedent's estate proceedings, fifteen (15) days by mail to all heirs and devisees and to all persons having requested special notice;
2. In conservatorship or guardianship proceedings, fifteen (15) days by mail to all persons who were required to be noticed in the petition for appointment and to all persons having requested special notice;
3. When an attorney withdraws as attorney of record by a substitution leaving the personal representative in propria persona, the attorney shall mail a copy of the substitution to all persons then interested in the estate. The substitution shall also include the personal representative's address and telephone number. (Effective January, 2000)

## FRESNO COUNTY SUPERIOR COURT

### RULE 79.13

### PETITION FOR EXAMINATION CONCERNING ESTATE ASSETS

Upon the filing of a petition for examination concerning estate assets pursuant to Probate Code § 8870, et seq., the attorney for the petitioner shall cause a citation to be issued and personally served on the person to be examined, as set forth in Rule 73.6 above, directing the citee to appear before the court and be examined and/or make an account under oath upon the matters recited in the petition. (Effective July, 1998)

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## **RULE 80: SALES**

### **RULE 80.1            INTRODUCTION**

Sales will be confirmed to an actual buyer only and not to a "nominee." A minimum ten percent (10%) cash deposit will ordinarily be required on any petition for confirmation of sale of real property. Petitions for confirmation of sale of real property should fully explain efforts to obtain the highest and best price, including specifics of exposure of the real property to the market. (Effective July, 1995)

### **RULE 80.2            APPRAISAL FOR SALE**

Sales of tangible personal property will not ordinarily be approved or confirmed unless the property has been appraised. When necessary, a partial inventory and appraisal may be filed for this purpose or a letter-appraisal obtained from the Probate Referee. (Effective January, 2000)

### **RULE 80.3            BOND ON SALES OF REAL PROPERTY**

Petitions for confirmation of sale of real property shall set forth the amount of bond in force at the time of sale and the amount of property in the estate which is required to be covered by bond. If no additional bond is required or if bond is waived, that fact shall be alleged. A secured promissory note taken as part of the consideration is personal property, and an additional bond shall be fixed in the amount of each note in addition to the amount of cash to be received. (Effective July, 1995)

### **RULE 80.4            ASSUMPTION OF ENCUMBRANCE ON SALES OF REAL PROPERTY**

Sales of real property will not ordinarily be confirmed, where the buyer assumes or takes subject to an existing encumbrance, if the estate is subject to a contingent liability. The petition should set forth the facts pertinent to such assumption agreement. (Effective July, 1995)

### **RULE 80.5            BROKER'S COMMISSIONS**

Upon confirmation of the sale of real property, the court will not allow a broker's commission in excess of six percent (6%) for the sale of improved real property unless justified by exceptional circumstances. The court may allow a commission of up to ten percent (10%) for the sale of unimproved real property or the sale of a mobile home. An executor, administrator, purchaser, or attorney for the estate will not be allowed any commission as a real estate broker. A broker representing a successful overbidder will not be allowed a commission unless the court is advised of such representation prior to confirmation of sale. A copy of an

## **FRESNO COUNTY SUPERIOR COURT**

executed broker's agreement shall be attached to the petition for confirmation of sale. (Effective July, 2000)

### **RULE 80.6            SALES OF SPECIFICALLY DEVISED OR BEQUEATHED PROPERTY**

On sales of specifically devised or bequeathed real or personal property, notice shall be given to the devisee or legatee, unless the consent of the devisee or legatee to such sale is filed with the court. (Effective July, 2000)

### **RULE 80.7            SALES OF SECURITIES**

In all petitions for sale of listed securities, the specific exchange on which such securities are traded shall be set forth. In petitions for sales of unlisted securities, the recent bid and asked prices shall be set forth. Petitions for sale of mutual funds redeemable by the issuer at net asset value shall allege that the shares will be redeemed for the net asset value per share on the date of redemption. If securities are "closely held," the petition shall furnish the basis for fixing the minimum sales price. The court will not authorize a sale of closely held stock ex parte unless waivers of notice by all persons interested, including unpaid creditors, are filed with the petition and unless the time for filing claims has expired. (Effective July, 2000)

### **RULE 80.8            ORDERS**

Terms of the sale shall be set forth in detail in the order confirming sale; merely attaching a copy of the escrow instructions to the order is not sufficient. For sales of real property, the full legal description and Assessor's Parcel Number must be provided in the order. (Effective January, 2002)

### **RULE 80.9            NOTICE OF INTENTION TO SELL REAL PROPERTY**

In addition to other requirements under Probate Code § 10304, the notice of intention to sell real property shall include the place at which bids or offers will be received and the date on or after which the sale will be made (not the date of the court confirmation hearing). The published notice is a solicitation for offers. No offer can be accepted until the date on or after the time for making bids expires. (Effective July, 2000)

# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 81: INVENTORY, ACCOUNTS AND REPORTS**

### **RULE 81.1            DEFINITIONS**

A "final" inventory is a full inventory of all estate assets reported, or where a partial inventory has previously been filed and the personal representative is filing a "final partial" inventory. A "partial" inventory covers only a portion of the known estate assets. A "supplemental" inventory contains newly discovered or received estate assets after what was thought to be a final inventory has been filed.

An "amended" inventory supersedes and completely restates an original inventory (final, partial or supplemental) and should show the total inventory amount as amended. An "amendment to inventory" is a correction to an original inventory (final, partial or supplemental) and must designate the items of the prior inventory which it amends. (Effective January, 2000)

### **RULE 81.2            INVENTORY DESCRIPTION OF REAL PROPERTY**

The Inventory and Appraisal shall describe real property with the legal description, the street address (if any), whether improved or unimproved, and shall include any assessor's parcel number. Additionally, the percentage of ownership, such at 100%, and the legal interest, such as fee simple, shall be stated. These requirements are in addition to those set forth in Probate Code section 8850(c). (Effective January, 2001)

### **RULE 81.3            INVENTORY DESCRIPTION OF PROMISSORY NOTE**

If a promissory note is secured, the security shall be described in detail. (Effective July, 1995)

### **RULE 81.4            REQUIRED FORM OF ACCOUNTS**

All sales during the account period should be reported, even if there is no gain or loss. The schedule of property on hand should describe each item, show the amount of cash on hand and show other property at appraised value or balance thereof (if a portion has been sold, disposed of, or principal receipts collected), and indicate whether the asset is blocked subject to further court order for release of principal and/or interest. (Effective July, 2000)

### **RULE 81.5            INDEPENDENT ACTS**

Any report in an estate administered under the Independent Administration of Estates Act shall set forth all independent acts taken without prior court approval during the period covered by the report, including a description of the act (such as an item of property sold, the name of the purchaser (except for securities) and sales price) and an allegation that notice was given as required, that no objection was



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received or that all interested parties waived notice or consented to the action. (Also see Rule 77.4 above.) (Effective July, 2000)

### **RULE 81.6                    PETITIONS FOR DISTRIBUTION**

A.     **Listing of Property to be Distributed.** Any petition for distribution must list and describe in detail all property to be distributed. The description shall include any cash on hand and must indicate whether promissory notes are secured or unsecured. If secured, the security interest must be described. The legal description of all real property must be included. Description by reference to the inventory is not acceptable.

B.     **Characterization of Property to be Distributed.** Any petition for distribution must contain an allegation as to the character of the property, whether separate or community, in all cases where its character may affect distribution. If some portion of the assets consists of community property, the allegation must show whether the interest included is only the decedent's one-half (1/2) interest in the community property or the entire community property of both spouses. In the absence of an election under Probate Code by the surviving spouse to include his or her interest in the estate, the court has no jurisdiction to order distribution of such interest.

C.     **Distribution of Personal Effects.** The court will not order distribution of personal effects, such as furniture or appliances, in undivided interests without the written consent of all distributees.

D.     **Distribution to Inter Vivos Trust.** If property in the estate is to be distributed to a trust not created in the decedent's will, a declaration of the trustee in office stating the name and date of the establishment of the trust, the trust taxpayer identification number, that the trust is in full force and effect, and that an executed copy of the trust instrument is in the trustee's possession shall be filed with the petition for distribution.

E.     **Preliminary Distribution Receipts.** Receipts for any preliminary distribution shall be on file prior to final distribution. (Effective July, 2000)

### **RULE 81.7                    WAIVER OF ACCOUNTING**

A.     **Status of Inventoried Items.** A petition requesting distribution on a waiver of accounting shall include the status of all inventoried items. The petition should include a list of the property on hand for distribution as it exists at the time of the petition and not merely reiterate the property shown on the inventory and appraisal, unless all of such property is still in the possession of the personal representative.

## FRESNO COUNTY SUPERIOR COURT

B. **Waiver of Accounting by Guardian of Minor.** If an accounting is sought to be waived by a guardian of a minor who is also the personal representative, the court may require a guardian ad litem to be appointed to represent the minor concerning the waiver of accounting. (Effective July, 2000)

### **RULE 81.8                    DISCLAIMERS AND DISTRIBUTIONS TO ASSIGNEES**

A copy of any disclaimer must be on file prior to the hearing on any petition for distribution of an affected asset.

Any assignment of an interest in the estate by a beneficiary shall be filed prior to the hearing on any petition for distribution of the beneficiary's interest or a portion thereof. (Effective July, 2000)

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# **FRESNO COUNTY SUPERIOR COURT**

## **RULE 82: CONSERVATORSHIPS, GUARDIANSHIPS AND OTHER MATTERS INVOLVING INCOMPETENT PERSONS**

### **RULE 82.1            INVESTIGATION COSTS**

In conservatorship and guardianship cases where charges are assessed for investigation and review pursuant to the Probate Code, billing will be made by the Fresno County Auditor-Controller/Treasurer-Tax Collector, Revenue and Reimbursement Division (telephone: (559) 488-3815). Normally, the billing will be made shortly after the investigation is completed.

Upon receipt of the bill make remittance payable to:

Fresno County Revenue and Reimbursement Division, Acct. #2810-5060  
Post Office Box 226  
Fresno, California 93708-0226

Obtain a receipt for filing with the court and for your records. A cover sheet must be attached to the receipt before it can be filed.

It is the policy of the court not to grant waivers of assessments on hardship grounds, but in the appropriate case a reasonable payment plan may be authorized.  
(Effective July, 2000)

### **RULE 82.2            CONFIDENTIAL REPORTS OR SUPPLEMENTS**

Confidential documents shall be stated to be "CONFIDENTIAL" in the caption and shall be filed separately.

Typical confidential documents include: medical reports, proposed conservator's Confidential Supplemental Information Report, Court Investigator's report, Central Valley Regional Center reports, Public Guardian investigation reports, and Child Protective Services reports. (Effective July, 2002)

### **RULE 82.3            INDEPENDENT POWERS**

It is the policy of the court to grant a guardian or conservator only those powers necessary to administer an estate. "Blanket powers" as set forth generally in Probate Code § 2591 will not be granted by the court. Each independent power requested must be justified by, and narrowly tailored to, the specific circumstances of each case. Any powers so granted must be specified in the order and in the Letters of Guardianship or Conservatorship. (Effective July, 1998)

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## **RULE 82.4                    INVESTMENT BY GUARDIAN OR CONSERVATOR**

The court does not act as an investment counselor. The standards set forth in the Probate Code sections regarding investments will be applied by the court in authorizing proposed investments. The court may consider the size and character of the ward's or conservatee's estate when reviewing a request for authorization for a specific investment.

The court will not ordinarily authorize the investment of the ward's or conservatee's funds in unsecured loans, secured loans to a near relative, or obligations of foreign governments or corporations.

Investments in real estate, either by purchase or encumbrance, will not be authorized unless supported by evidence of the real estate's value, such as an appraisal by the probate referee regularly appointed in the guardianship or conservatorship estate. (Effective July, 1995)

## **RULE 82.5                    SALES**

The provisions set forth in these rules dealing with sales of real property and securities in decedents estates must also be complied with for guardianships and conservatorships unless specific code sections dealing exclusively with provisions for guardianships and conservatorships apply (i.e., bond on sale of real property, brokers' commissions, etc.). See Rule 80 of these rules above. (Effective July, 1995)

## **RULE 82.6                    TEMPORARY                    CONSERVATORSHIPS                    AND GUARDIANSHIPS**

A.    **Filing Procedure.** The original and three (3) copies of the Petition for Appointment of Temporary Guardian or Conservator and of the Petition for Appointment of Guardian or Conservator shall be filed. (For other rules concerning ex parte petitions, see Rule 73.5 above.)

B.    **Hearings.** The court may require that a hearing be held on any petition for Appointment of a Temporary Guardian or Conservator, even if submitted ex parte. In each instance, the court will advise counsel or the petitioner in pro per of the need for a hearing.

C.    **Limited Powers.** Upon any petition seeking additional powers, the court may consider any additional powers granted in setting the amount of the bond.

## FRESNO COUNTY SUPERIOR COURT

D. **Length of Appointment.** If the temporary appointment is extended by the court, amended letters may be issued upon the request of the temporary guardian or conservator.

E. **Requested Change in Residence.** A change in residence of a ward or a conservatee will not be considered by the court unless all parties concerned are actually noticed for an ex parte hearing and given full opportunity to be heard.

F. **Public Benefit Estates.** When the sole assets and income of the estate consist of public benefit receipts, the court will not ordinarily appoint a guardian or conservator of the estate. (Effective July, 2002)

### **RULE 82.7                    APPOINTMENT OF GUARDIAN**

A. Where appointment of a guardian of the estate is sought for more than one minor, a separate case number shall be assigned for each minor. If the minors are from the same family, only one filing fee shall be charged. If the petition requests appointment as guardian of the person only, a single petition may be filed for more than one minor.

B. If the minor has been or is a party to a civil action in which monetary damages are claimed, the case number and the county in which the case is pending must be identified.

C. In addition to the original petition for appointment of guardian of the person, the proposed guardian shall submit to the Probate Filing Clerk one (1) copy of the petition for filing and delivery to the Court Investigator's Office together with: (i) an original and two (2) copies of the completed Guardianship Questionnaire for each proposed guardian; (ii) a Declaration Under Uniform Child Custody Jurisdiction Act (Judicial Council form MC-150) and one (1) copy; (iii) a copy of the legal birth certificate (registered, not hospital certificate of the proposed ward(s); and (iv) current school records, including attendance and grades, for the proposed ward(s). These documents are necessary for the Court Investigator's Office to perform an investigation. Failure to provide the documents in a timely manner will delay the investigation process and likely cause a continuance. Guardianship Questionnaires are available from the Probate Filing Clerk in Room 402 of the courthouse. The hearing shall be set at least sixty (60) days from filing to allow sufficient time for an investigation report.

D. Proposed guardians shall appear personally at the hearing on the petition for appointment. (Effective January, 2000)

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## **RULE 82.8            EFFECT OF OTHER PENDING PROCEEDINGS**

A Petition for Appointment of a Guardian of a minor will not ordinarily be considered if any of the following circumstances exist:

A.     The matter involving the custody of a child is presently pending in the Family Law Court. In such case, a petitioner seeking custody or visitation rights will be instructed to seek joinder in the family law proceeding and thereafter seek modification of the existing family law custody order or obtain a custody order. Under emergency conditions, a temporary guardianship may be granted to maintain the status quo until joinder and modification can be effected.

B.     Adoption proceedings are pending;

C.     The minor is subject to the jurisdiction of the Juvenile Court; or

D.     The minor may be subject to the jurisdiction of the American Indian Tribal Court pursuant to the Federal Indian Child Welfare Act, 25 U.S.C. § 1903. (Effective January, 2002)

## **RULE 82.9            DUTIES OF GUARDIAN - SUPPORT**

Guardianship funds shall not be used to replace a parent's obligation of support. If, however, the parent(s) lack financial ability to provide support, a Family Law Income and Expense and Property Declaration must be filed. If the minor is not living with a parent, the court may allow a monthly allowance or other payment for the minor's expenses upon presentation and approval of a budget. (Effective January, 2000)

## **RULE 82.10          TERMINATION AND DISCHARGE**

A.     On approval of the final account, the court will order all assets belonging to the estate to be delivered to the former ward or deposited, transferred, held or otherwise paid, pursuant to the Probate Code provisions pertaining to guardianships involving assets solely in the form of money.

B.     On the ward's attaining the age of majority, a guardianship of the person terminates without any court order.

C.     One year after majority, on a proper showing, a final discharge will be granted in the same manner as for the discharge of the fiduciary of a decedent's estate.

## **FRESNO COUNTY SUPERIOR COURT**

D. The distribution receipt signed by the person to whom the estate assets are paid must be filed to obtain the final discharge. (Effective January, 1998)

### **RULE 82.11            APPOINTMENT OF CONSERVATOR**

A. **Duties of Conservator**. Before appointment, the proposed conservator shall view the videotape entitled "With Heart: Understanding Conservatorship." The videotape is scheduled for viewing in Room 402 under the supervision of the Probate Filing Clerk. The proposed conservator shall present the Probate Filing Clerk's "Proof of Viewing Videotape" form to the court at the time of the hearing. A conservator who resides outside of Fresno County may make arrangements to view the videotape through the Court Investigator's Office of any county of this state.

B. **Public Assistance Payments**. If the only income in a conservatorship estate consists of public benefit payments, the court will not ordinarily appoint a conservator of the estate on the basis that a substitute payee can manage the benefit payments on behalf of the conservatee. (Effective July, 2002)

### **RULE 82.12            SALE OF CONSERVATEE'S RESIDENCE**

Petitions for authority to sell the conservatee's residence must be set on the probate calendar. Approval for authorization to execute a listing agreement may be submitted ex parte. (Effective January, 2000)

### **RULE 82.13            APPOINTMENT OF SUCCESSOR CONSERVATOR**

The petition must specifically allege that the petitioner met and conferred with the person being nominated for appointment as successor conservator and that the person agrees to accept appointment as successor conservator. Notice must be mailed to the proposed successor conservator. (Effective January, 2000)

### **RULE 82.14            PETITION FOR EXAMINATION CONCERNING ESTATE ASSETS**

Upon the filing of a petition for examination concerning estate assets pursuant to Probate Code § 2616, et seq., the attorney for the petitioner shall cause a citation to be issued and personally served on the person to be examined as set forth in Rule 73.6 above. (Effective July, 2001)



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## **RULE 82.15      CONSENTS BY NON-ENGLISH SPEAKING PERSONS**

Consents signed by a non-English speaking person must be translated into the person's own language, signed, and filed together with the statement of the translator certifying the translation to be an accurate representation of the contents of the consent document(s). (Effective July, 2001)

## **RULE 82.16      ESTABLISHING TRUSTS FOR CONSERVATEES**

A. Where a petition seeks authority to establish a living trust for the benefit of a conservatee, including a special needs trust, it is the policy of the court to grant the petition only on adequate protection of the trustor/conservatee.

B. A copy of the proposed trust instrument shall be attached to the petition. Where the proposed trust is otherwise suitable to avoid the expenses of probate or to preserve the conservatee's right to receive public assistance benefits, the court will ordinarily require the following "trust override provisions," or equivalent provisions, to be included in the instrument:

"Regardless of any other provisions of this trust, in managing the trust, the trustee shall be subject to the same terms and conditions imposed upon a conservator of the estate during the lifetime of the conservatee, including but not limited to:

1. Posting bond based on the assets and income of the trust;
2. Accounting to the court on a regular basis (to be filed in this proceeding);
3. Investment limitations in accordance with provisions of the Probate Code applicable to conservatorships;
4. Sales of assets (including returns for confirmation and overbids);
5. Providing for the conservatee's needs without regard to the interest of the remainder beneficiaries;
6. Obtaining prior court approval for payment of fees to attorneys, conservators and trustees; and
7. Paying fees and costs ordered by the court.

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C. The petition to approve the establishment of the trust should include a recommendation for the amount of bond to be posted by the proposed trustee and for termination of the conservatorship estate and issuance of amended letters of conservatorship for the person only. Prior to granting a petition to establish a trust, the court will require a final accounting to be filed by the conservator, if not filed concurrently with the petition to establish the trust. Thereafter, all trust accountings shall continue to be filed in the conservatorship proceeding. (Effective July, 1998)

### **RULE 82.17                    APPOINTMENT OF ATTORNEYS FOR CONSERVATEES**

A. The court may appoint an attorney to represent a conservatee when a request is made pursuant to Probate Code § 1880 for the court's determination that the conservatee lacks the capacity to give informed medical consent.

B. The court-appointed attorney shall request to be discharged upon resolution of the matter for which the attorney was appointed, unless good cause exists to continue the attorney-client relationship, subject to court approval. The request for discharge or to continue the attorney-client relationship may be included either in a petition for compensation filed pursuant to Rule 82.16(B) below or in a separate ex parte application pursuant to Rule 82.16(C) below. A request to continue the attorney-client relationship should state the reasons why continued representation is appropriate or necessary. (Effective July, 2000)

### **RULE 82.18                    COMPENSATION OF COURT-APPOINTED ATTORNEY**

A. **Source of Payment.** At the time of appointment, the Order Appointing Counsel shall indicate whether the attorney is to be paid by the conservator of the estate or by the person represented pursuant to Probate Code § 1472(a), or whether the attorney is to be paid by the County of Fresno at the court rate for indigent defendants pursuant to Probate Code § 1472(b). Upon request of appointed counsel, and for good cause, the court may amend this order.

B. **Payment by Conservator of Estate or Person Represented.** If the conservatee or person represented has the ability to pay compensation and expenses of counsel, as indicated on the Order Appointing Counsel, the attorney shall file a petition for compensation, including a complete statement of the services rendered and a detailed breakdown of the hours spent, the hourly rate and the total amount requested for such services. Notice of the hearing shall be given pursuant to Probate Code § 1460.

C. **Payment by County.** If the conservatee or person represented does not have the ability to pay compensation and expenses of counsel, as indicated on the Order Appointing Counsel, the attorney shall request payment by filing the form

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entitled "Application and Order for Payment of Attorney's Fees" which is available from the Probate Filing Clerk. The application shall be accompanied by:

1. A complete statement of the services rendered, including the date, hours spent and narrative description of the services rendered, and
2. A detailed breakdown of all expenses paid, if any, including photocopies of receipts.

The application may be submitted to the Probate Filing Clerk, Room 402, for delivery to the Clerk designated to review and process the application. Questions regarding content and requirements may be directed to the Clerk prior to submission of the application. The attorney may thereafter file a separate ex parte application to be submitted to the Probate Judge for discharge as attorney of record for the conservatee or person represented.

D. **Payment to Counsel for LPS Conservatee.** If private counsel is appointed to represent an LPS conservatee or proposed LPS conservatee and the person has the ability to pay compensation and expenses of counsel, as indicated on the Order Appointing Counsel, the petition for compensation shall be filed in the LPS proceeding following the guidelines set forth in subsection (b) above. If a conservator of the estate has been appointed, the petition should include the case number of the estate proceeding, if known to the court-appointed attorney. The court shall order the conservator of the estate or, if none, the person, to pay in any manner the court determines to be reasonable and compatible with the person's financial ability. (Effective July, 2000)

### **RULE 82.19      LANTERMAN - PETRIS - SHORT ACT (LPS)** **CONSERVATORSHIP**

A. **Appointment.** The Fresno County Board of Supervisors has designated the Public Administrator/Public Guardian as the investigating agency in LPS conservatorships.

B. **Petition.** If a private person wishes to become the LPS conservator, the Public Guardian or the Office of the Fresno County Counsel, as the attorney for the Department of Health Services, must be contacted prior to the hearing. (Effective January, 2000)

### **RULE 82.20      ACCOUNTS**

A. **Time of Filing.** Accounts must be filed no later than sixty (60) days after the end of the accounting period.

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B. **Notice of Hearing.** A hearing must be set for the approval or settling of the account.

C. **Contents and Form of Account.** Periodic payments should be set out showing the amounts received monthly, such as Social Security, Veteran's Administration benefits, etc. An additional copy of the accounting shall be filed for use by the Court investigator.

D. **Investment Performance Report.** Accounts shall be accompanied by a report containing the guardian's or conservator's investment objectives and results obtained with reference to the needs of the ward or conservatee. The report shall explain any loss to the estate and/or the reasons for holding unproductive property.

E. **Dispensing with Account.** Petitions by the guardian or conservator for an order dispensing with accounts will not be granted ex parte.

F. **Accounting Requirements for Blocked Accounts – Guardianships.** The court has discretion to order accounts blocked, rather than require a bond. If a guardianship of the estate is established and the court orders that all monies are to be deposited in a blocked account in a financial institution or trust company pursuant to Rule 74.1 above, the guardian shall file an inventory and appraisal within ninety (90) days of appointment and thereafter file a first account one (1) year after date of appointment. The petition on the first account may include a request that the court dispense with further accountings on the ground that no withdrawals of principal or income may be made without prior court approval.

If the guardian of the estate requests authority to deposit the minor's funds into a blocked brokerage account to allow greater flexibility in investments, the court will not dispense with accountings but will continue to require annual and biennial accountings even though all assets are blocked.

If the guardianship estate includes both public benefits, such as Social Security death benefits, and assets not derived from public assistance sources, upon petition therefor, the court in appropriate circumstances may permit the public benefits to be paid toward the support of the minor notwithstanding the existence of a third party legally obligated to provide such support. If so authorized, an itemized accounting of the public benefits shall not be required other than to show their receipt and general disbursement towards the support of the minor. The remaining assets shall be subject to the accounting requirements as set forth above.

G. **Termination Upon Exhaustion of Estate.** If the estate has been exhausted and the only income is public benefits for which the conservator (as

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conservator of the person only) can remain representative payee through the Social Security Administration, the conservator may petition the court for an order terminating the conservatorship of the estate and discharging the conservator of the estate. The order shall provide for amended letters to be issued to the conservator of the person.

H. **Termination of Estate Upon Death of Conservatee.** Upon the death of the conservatee, the conservator shall file a final account, report and petition for disposition of assets, if any, within sixty (60) days. If additional time is needed to complete the account and terminate the proceeding, the conservator shall file an ex parte petition to notify the court of the death of the conservatee and request an extension of time to file the final account.

The final account shall include the period up to the date of death of the conservatee and shall show all property on hand as of the date of death. If the conservator makes further expenditures or receives additional income prior to filing the final account, the conservator shall prepare a separate supplemental account to be incorporated in the final account and report, reflecting all post-death transactions and showing property on hand as of the filing of the accounting, pursuant to Probate Code § 2620(b).

The conservator shall request an order authorizing the conservator to turn the conservatee's property over to the persons entitled to it. If a personal representative has been appointed in a probate proceeding following the death of the conservatee, the probate case number shall be set forth in the final account and report. If appointment of a personal representative is necessary to accomplish the disposition of the conservatee's assets and a petition for appointment has been filed but not approved or has not been filed, the court will continue the hearing to allow a personal representative to be appointed. (Effective July, 2000)

### **RULE 82.21      FEES AND COMMISSIONS**

A. **"Just and Reasonable" Compensation For Conservator's or Guardian's Attorney.** The court will make a determination of what is "just and reasonable" based upon the information supplied to the court in the petition requesting allowance of compensation. The petition requesting compensation for the attorney shall state so in the caption. The request for compensation shall include an explanation of how the compensation was determined or calculated. All services for which compensation is requested shall be described in a detailed declaration including the circumstances surrounding the services rendered, the necessity for the services provided and the benefit to the estate (or an explanation as why no benefit resulted). The declaration shall have an attachment setting forth dates of and hours devoted to the services provided, the hourly rate of the attorney and/or paralegal providing the services, and a total of hours and charges for each.

## FRESNO COUNTY SUPERIOR COURT

Where there is an estate, as an alternative to submitting such declarations, attorneys may request compensation as provided by subsections 82.21(E) and (F).

The court will not require a declaration or other justification for conservator's or guardian's attorney's services related to the sales of real and personal property and preparation of fiduciary tax returns when calculated within the following parameters.

1. **Real Property Sales:** When court confirmation of the sale of real property is required, one thousand dollars (\$1,000).

2. **Personal Property Sales:** Includes sales of household furnishings, personal effects, and vehicles. When court confirmation of the sale is required, ten percent (10%) of the sales price to \$10,000.00 with a maximum fee of one thousand dollars (\$1,000.00).

3. **Preparation of Fiduciary Tax Returns:** Five hundred dollars (\$500.00) flat fee if the attorney prepares and files fiduciary income tax returns for the estate.

B. **When Attorneys May Submit Requests for Compensation.** If there is no estate, the attorney seeking compensation may petition the court at any reasonable time after the conservatorship has been established.

If there is an estate, the attorney seeking compensation under subsection 82.21(E), may do so at any time after filing the inventory and appraisal. The attorney may petition the court for an order fixing and allowing fifty percent (50%) of the compensation allowed by subsection 82.21(E). At any time after filing the first account and report, the attorney may petition the court for an order fixing and allowing the remainder fees, without itemization as allowed by subsection 82.21(E).

C. **Periodic Payments.** Periodic payments of compensation in a conservatorship proceeding may be made with prior court authority. The court generally will not consider periodic payments until the time of the first account.

D. **Fees or Commissions Taken in Advance.** Counsel taking compensation in a conservatorship or guardianship matter without prior court approval commit a serious breach of ethics and are subject to State Bar discipline. See, e.g., *Albertson v. State Bar*, 43 Cal.3d 638; *Murry v. State Bar*, 40 Cal.3d 575; and *Tarver v. State Bar*, 37 Cal.3d 122. In addition, counsel taking an "advance" unapproved compensation risks a surcharge order requiring the payment of interest from the date of the unauthorized payment.

## FRESNO COUNTY SUPERIOR COURT

E. **Attorney Compensation Considered Reasonable for the Establishment of an Uncontested Conservatorship or Guardianship through the First Account.** The court will ordinarily consider attorney compensation in an amount not to exceed \$2,000.00 to be just and reasonable for the establishment of an uncontested conservatorship or guardianship through the first account. This includes the following usual services:

1. Initial interview of the proposed conservator or guardian and conservatee or ward;
2. Investigation as to the need for a conservatorship or guardianship;
3. Preparation, filing and service of notice of the petition for appointment;
4. Preparation and filing for the appointment of a temporary conservator or guardian, if necessary;
5. Preparation and filing of letters for conservatorship or guardianship;
6. Preparation and filing of inventory and appraisal;
7. Preparation and presentation of the first account and report;  
and
8. Appearances as necessary to accomplish the above.

F. **Attorney Compensation Considered Reasonable for Services Rendered After the Filing of the First Account.** For services during any year subsequent to the filing of the first account, upon the rendering of subsequent accounts and reports, the court will consider reasonable compensation to be \$1,000.00 per year.

G. **Compensation and Reimbursement of Costs for Conservators and Guardians.** Compensation to conservators and guardians shall be based upon a detailed declaration showing the nature, extent of, and need for the services rendered. The detailed declaration shall include the dates and the hours expended providing services to the conservatorship or guardianship, and the hourly rate charged by the Conservator or Guardian. Any compensation allowed shall be a charge against the estate.

## FRESNO COUNTY SUPERIOR COURT

The court will not require a declaration or other justification for conservator's or guardian's services provided related to the sales of real and personal property and preparation of fiduciary tax returns when request is made within the following parameters.

1. **Real Property Sales:** One thousand dollars (\$1,000.00).
2. **Personal Property Sales:** Includes sales of household furnishings, personal effects, and vehicles. Ten percent (10%) of the sales price to \$10,000.00 with a maximum fee of one thousand dollars (\$1,000.00).
3. **Preparation of Fiduciary Tax Returns:** Five hundred dollars (\$500.00) flat fee for personally preparing and filing fiduciary income tax returns for the conservatorship or guardianship.

The court will consider periodic payments only upon a properly noticed petition demonstrating good cause. (Effective January, 2002)

### **RULE 82.22**

### **REIMBURSEMENT FOR EXTRAORDINARY COSTS INCURRED**

A. Usual costs of photocopies, postage, secretarial services, word processing time, computer time, local telephone calls, local travel, mileage and parking will not normally be reimbursed. These expenses are viewed as part of the usual cost of doing business covered by the attorney's fee.

B. Extraordinary costs incurred may be reimbursed at the court's discretion if supported by declaration. These costs are not limited to the following:

1. Alternatives for ordinary postage (e.g., Federal Express, messenger service, United Parcel Service);
2. Unusual amounts of postage and photocopying (e.g., over ten (10) persons entitled to notice); and
3. Long distance travel.

Counsel is advised to petition the court for instructions before expending extraordinary amounts for which reimbursement will be sought. (Effective July, 2001)



## FRESNO COUNTY SUPERIOR COURT

### **RULE 82.23      REIMBURSEMENT OF ATTORNEY'S, CONSERVATOR'S, OR GUARDIAN'S COSTS ADVANCED**

The following costs advanced may be reimbursed to the attorney, conservator, or guardian without prior court permission:

- A. Fees charged by the Clerk of the Court.
- B. Newspaper publication fee.
- C. Surety bond premiums.
- C. Probate referee fees.
- D. Court investigator's fees.

The court will consider periodic payments only upon a properly noticed petition demonstrating good cause. (Effective January, 2002)

# FRESNO COUNTY SUPERIOR COURT

## **RULE 83: TRUSTS**

### **RULE 83.1      ACCOUNTS**

All trust accounts shall conform to Rule 81.5 above, unless otherwise stated herein.

A.    **Period of Account.** In matters in which the court has continuing jurisdiction of a trust, the following shall apply to accounts of the trustee:

The first account should close on or before one (1) year after the judgment of distribution of the estate from which the property was received. Any accounting filed after the date on which it was due, shall be brought current to the date of filing, not to the date on which it was due.

An account may seek appropriate intervals for filing subsequent accounts, considering the nature of the trust property, the interests of the beneficiaries, the size of the trust estate, and other relevant factors. Ordinarily, the account should be filed within three (3) months after the close of the accounting period.

B.    **Content of Accounts.** An account must show a clear reconciliation between that account and the amount chargeable under one of the following:

1.    The judgment of preliminary or final distribution from which the property was received, if the judgment sets a value for each item of trust property;

2.    The receipt of trustee (distributee) at the time of distribution, if the receipt states a value for each item of trust property, and conforms to the values shown in the account and petition on which the judgment of distribution was based;

3.    The inventory and appraisal filed in the administration of the decedent's estate;

4.    An inventory and appraisal prepared by the Trustee and appraised by the Probate Referee showing all assets received and the value of each at the date of receipt;

5.    A verified statement of the trustee giving the value of all trust assets received as of the date of receipt and the basis for the valuation.  
(Effective January, 1998)

# FRESNO COUNTY SUPERIOR COURT

## **RULE 83.2            REPORT OF TRUSTEE**

A.    **Report Shall Accompany Each Account.** The report shall contain sufficient allegations to enable the court to determine appropriate venue.

B.    **Contents of Report.** The report shall contain:

1.    A reference to the purposes of the trust and how the purposes have been addressed by the trustee;

2.    Names and addresses of all beneficiaries entitled to notice;

3.    A brief summary of distributions made to or for the benefit of the beneficiaries;

4.    The investment and management objectives and results with reference to the purposes of the trust, as appropriate;

5.    Any other information which will enable the court to evaluate the activities of the trustee with reference to the purposes and objectives of the trust. (Effective July, 1995)

## **RULE 83.3            PETITIONS CONCERNING INTERNAL AFFAIRS OF TRUSTS**

Unless a trust is subject to continuing court jurisdiction, a petition concerning the internal affairs of the trust should set forth the purpose for which the court's ruling is sought. It is the policy of the court for trusts to be administered as free from court interference as possible; to that end:

A.    The court will not consider civil litigation matters to be "concerning the internal affairs of a trust" merely because the allegations involve property subject to a trust, and will order such matters to be placed on the civil calendar;

B.    The court will exercise its discretion to dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the Trustee and the beneficiaries. (Effective July, 1995)

## **RULE 83.4            REMOVAL OF TRUST FROM COURT JURISDICTION**

A.    Where a testamentary trustee who is not a trust company seeks to remove a trust from the continuing jurisdiction of the court, the petition should allege

## FRESNO COUNTY SUPERIOR COURT

the following criteria which the court will consider in exercising its discretion as to whether to grant the petition:

1. Whether the trustee is and intends to remain a resident of California;
2. The ability of the trustee to respond to requests of beneficiaries;
3. The date the will was signed, and whether decedent expressed an opinion regarding continuing court jurisdiction.

B. If the will expresses a desire to have the trust subject to the continuing jurisdiction of the court, there must be a strong showing of changed circumstances to justify removing the trust from continuing court jurisdiction.

C. If the petition is granted, a bond may be required and the court may consider the following facts in determining the amount and need for the bond:

1. Proof that the trustee's non-exempt assets are substantially greater than the amount of bond which would otherwise be required, or
2. Written waivers of bond signed by all adult beneficiaries, or
3. Provisions for the deposit of personal property with a trust company or for deposit of funds in one or more blocked accounts. (Effective July, 1995)

### **RULE 83.5      SPECIAL NEEDS TRUSTS, COMPROMISE OR JUDGMENT FOR MINORS OR INCOMPETENT PERSONS**

Where a special needs trust is to be established as a recipient of all or any part of the proceeds of a judgment or compromise on behalf of a minor or incompetent person (Probate Code § 3600, et seq.), a copy of the trust shall be attached to the petition, which shall be set for hearing on the probate calendar. In addition to an affirmative showing that the requirements of § 3604 are met, the court will ordinarily require that the trust contain provisions identical to the "trust override" provisions set forth in Rule 82.16 of these rules. (Effective January, 2002)

### **RULE 83.6      FEES**

A. Any petition seeking authority to pay, or approval of, trustee's or trustee's attorney's fees, or both shall so state in its caption, in addition to any other relief requested.

## FRESNO COUNTY SUPERIOR COURT

B. In the event the court determines that any fees paid in advance of a court order are excessive or improper, the court may order the amounts repaid, with interest, or impose a surcharge under appropriate circumstances.

C. The court will consider the following amounts for fees and commissions for sales of real property, personal property, and the preparation of the federal and state tax returns to be the minimum amounts for such services and will not require a declaration or other justification for an award of the following amounts:

1. Real property sales: When court confirmation of the sale is required, one thousand dollars (\$1,000.00).

2. Sales of household furnishings, personal property and vehicles: When court confirmation of the sale is required, ten percent (10%) of the sales price to \$10,000.00 with a maximum fee of one thousand dollars (\$1,000.00).

3. Five hundred dollars (\$500) flat fee for preparation and filing of Federal and State Fiduciary Income Tax Returns, if personally prepared by the trustee.

The request for compensation, other than as set forth above, shall include an explanation of how the compensation was determined or calculated. All services for which compensation is requested shall be described in a detailed declaration including the circumstances surrounding the services rendered, the necessity for the services provided and the benefit to the trust (or an explanation as why no benefit resulted). The declaration shall have an attachment setting forth dates of and hours devoted to the services provided, and the hourly rate of the attorney and/or paralegal providing the services.

In each case where attorney's fees are sought, the beneficiaries shall be given notice of the amounts requested. Notice may be given by mailing a copy of the petition **or** by including the amounts requested in the Notice of Hearing. (Effective January, 2002)

# FRESNO COUNTY SUPERIOR COURT

## **RULE 84: COMMISSIONS AND FEES IN DECEDENT'S ESTATE**

### **RULE 84.1            STATUTORY COMPENSATION IN DECEDENTS' ESTATES**

A.     **Calculation Must be Shown.** All petitions requesting payment of statutory compensation, even if accompanied by a waiver of accounting, must show the calculation of the compensation requested.

B.     **Basis of Computing Statutory Commissions and Fees on Waiver of Accounting.** Where the accounting is waived, the basis of the statutory compensation shall be the inventory value of the estate plus or minus gains or losses on sales. Computation of gains and losses shall be set forth in the report of the personal representative. If the report also includes income receipts as a basis for statutory compensation, a schedule of receipts must be included.

C.     **Office and Travel Expense.** The court considers office and travel expenses of fiduciaries and attorneys to be covered by the statutory fees. Such expenses include photocopies and postage, secretarial and word processing time, paralegal time for ordinary services, computer time for ordinary services, local telephone calls, local travel, mileage, and parking. The court, in its discretion, may allow unusual office expenses such as photocopying, express mail, postage (involving over ten (10) beneficiaries), or long distance telephone expense, if the court considers such expenses necessary and reasonable in view of the amount of the statutory fees and work required in administration of the estate. Reimbursement for costs of substitutes for ordinary mail (e.g., Federal Express, local messenger services, United Parcel Service) and long distance telephone will normally be permitted. Travel and office expenses appearing in any account should be explained in the report.

Counsel is advised to petition the court for instructions before expending extraordinary amounts for which reimbursement will be sought. (Effective July, 2000)

### **RULE 84.2            EXTRAORDINARY COMPENSATION IN DECEDENTS' ESTATES**

A.     Extraordinary fees and commission may be awarded (allowed) for the attorney for extraordinary services, including but not limited to the following:

1.     Sales, leases, exchanges, financing or foreclosure of real or personal property;
2.     Contested or litigated claims against the estate;

## FRESNO COUNTY SUPERIOR COURT

3. Preparation of income, sales, withholding, gift and estate tax returns and handling of audits or litigation connected with tax liabilities;
4. Litigation connected with estate assets;
5. Carrying on the decedent's business;
6. Will contests.

B. The court will consider the following amounts for extraordinary fees and commissions for attorneys for sales of real property, sales of personal property and the preparation of the federal estate tax return to be the minimum amounts for such services and will not require a declaration or other justification for an award of the following amounts:

1. Real property sales: When court confirmation of the sale is required, one thousand dollars (\$1,000.00).
2. Sales of household furnishings, personal effects and vehicles: When court confirmation of the sale is required, ten percent (10%) of the sales price to \$10,000.00 with a maximum fee of one thousand dollars (\$1,000.00).
3. Preparation of federal estate tax return: If personally prepared and filed by the attorney, two thousand dollars (\$2,000.00).

C. Extraordinary fees and commissions may be awarded (allowed) for the personal representative for extraordinary services, including but not limited to the following:

1. Sales, leases, exchanges, financing or foreclosure of real or personal property;
2. Contested or litigated claims against the estate;
3. Preparation of income, sales, withholding, gift and estate tax returns and handling of audits or litigation connected with tax liabilities;
4. Litigation connected with estate assets;

## **FRESNO COUNTY SUPERIOR COURT**

5. Carrying on the decedent's business;
6. Will contests.

D. The court will consider the following amounts for extraordinary fees and commissions for the personal representative for sales of real property, sales of personal property and the preparation of the federal estate tax return to be the minimum amounts for such services, and will not require a declaration or other justification for an award of the following amounts:

1. Real property sales: One thousand dollars (\$1,000.00).
2. Sales of household furnishings, personal effects and vehicles: Ten percent (10%) of the sales price to \$10,000.00 with a maximum fee of one thousand dollars (\$1,000.00).
3. Preparation of federal estate tax return: If personally prepared and filed by the attorney, two thousand dollars (\$2,000.00).

E. A declaration justifying the payment of extraordinary commissions or fees must be prepared and presented at the court for all other matters. A narrative description of the services performed and claimed to be extraordinary shall set forth each item of extraordinary services so claimed. Additionally, the declaration shall set forth the necessity for such work; if the attorney has performed it, why it was necessary for an attorney to do so; the number of hours devoted to it; the amount of the hourly rate charged and the ways in which the estate benefited. Each category of claimed extraordinary work shall be separately stated.

F. The following factors will guide the attorney and the court in determining whether and what amount extraordinary commissions and fees will be awarded:

1. The nature of the services;
2. The difficulty of the services;
3. Amount involved in the services;
4. The skill employed in the handling of the services;
5. The attention given to the matter;



## FRESNO COUNTY SUPERIOR COURT

6. The success or failure of the attorney's or representative's efforts;
7. The experience and qualifications of the person performing the services;
8. The importance of the services of the estate;
9. The necessity for skilled legal ability;
10. Time consumed;
11. Benefits occurring to the estate and to the beneficiaries;
12. Results obtained;
13. Reasonable fee in the county; and
14. The amount of statutory fees and commissions paid or payable.

Extraordinary attorneys' services may include services of a paralegal acting under the direction and supervision of an attorney. The petition must set forth the hours spent, the qualifications of the paralegal, the work performed and the hourly rate. In addition the petition should provide the court with assurance that the amount requested for the extraordinary services of the attorney and paralegal combined do not exceed the amount appropriate if the attorney had provided the services without the paralegal's assistance.

In each case where extraordinary commissions and/or extraordinary attorney's fees are sought, the heirs or residuary devisees shall be given notice of the amounts requested. Notice may be given by mailing a copy of the petition or by including the amounts requested in the Notice. (Effective January, 2002)

### **RULE 84.3**

#### **COMPENSATION; ATTORNEY AS PERSONAL REPRESENTATIVE**

A. If an attorney seeks appointment as personal representative, and retains that attorney's law firm to act as attorneys for the personal representative, an agreement shall be filed prior to any request for fees or compensation stating that:

1. The attorney-personal representative shall receive fees for acting as personal representative;

## FRESNO COUNTY SUPERIOR COURT

2. The personal representative's law firm shall receive fees for acting as the personal representative's attorney; and

3. No part of any attorney's fees awarded or allowed to the law firm by the court shall be received by the personal representative.

B. Any petition requesting fees or compensation shall make reference to the agreement previously filed. (Effective January, 2000)

### **RULE 84.4                    TIME FOR ALLOWING COMPENSATION**

A. **Decedents' Estates.** Statutory compensation will be granted by the court only in proportion to the work actually completed. The last 50% of the statutory compensation generally will not be allowed before final distribution.

B. **Surcharge if Fees Paid Before Court Order.** There is no authority for the payment of any commission or attorney's fees in decedents' estates, guardianships, or conservatorships in advance of a court order authorizing the payment. It is the policy of the court to surcharge representatives or attorneys interest from the date of payment to the date of the order authorizing the same, payable at the rate prescribed by the Code of Civil Procedure for judgments, unless the written consent of the affected devisees or heirs of a decedent's estate is filed with the court and the amounts paid are reasonable and proper. (Effective January, 2000)

**FRESNO COUNTY SUPERIOR COURT**

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**FRESNO COUNTY SUPERIOR COURT**

**RULES 85-95: RESERVED.**

**FRESNO COUNTY SUPERIOR COURT**

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# FRESNO COUNTY SUPERIOR COURT

**FRESNO COUNTY SUPERIOR COURT**

**APPENDIX A: CIVIL**

**APPENDIX A1**

**RESERVED.**

# FRESNO COUNTY SUPERIOR COURT

## APPENDIX A2

### ATTORNEYS' FEES UPON DEFAULT JUDGMENT

A. Upon entry of default judgment the following attorneys' fees shall be awarded under normal conditions, or included in the judgment by the Clerk, in actions on promissory notes, contracts, and foreclosures, which provide for attorneys' fees:

1. Action on note or contract, exclusive of costs:

20% of the first \$5,000.00 or \$400.00, whichever is greater;  
15% of the next \$10,000.00;  
10% of the next \$10,000.00;  
5% of the next \$25,000.00;  
2% of the next \$50,000.00;  
1% of the amount over \$100,000.00.

2. Foreclosure: the same amount as computed above, increased by 10%, or \$750.00, whichever is greater.

3. A petition for compensation for additional services shall include an itemized statement of the services rendered or to be rendered by the attorney and a reference in the caption and prayer to the request for additional fees. An appearance by the attorney or the parties is not normally, but may be, required. In determining such fees, the court shall consider the experience of counsel, the time expended, the complexity of the issues, the amount involved and the results achieved.

B. An action on a book account, when Civil Code § 1717 does not apply, shall be governed by Civil Code § 1717.5. (Effective January, 1998)



**FRESNO COUNTY SUPERIOR COURT**

**APPENDIX B: CRIMINAL**

**APPENDIX B**

**RESERVED.**

# **FRESNO COUNTY SUPERIOR COURT**

## **APPENDIX C: FAMILY LAW**

### **APPENDIX C1**

#### **LIST OF ABBREVIATIONS**

AFDC	Aid to Families with Dependent Children
CAU	Fresno County District Attorney – Child Abduction Unit
DA	Fresno County District Attorney
FCS	Fresno County Family Court Services
FSD	Fresno County District Attorney Family Support Division
MSA	Marital Settlement Agreement
NOM	Notice of Motion
OSC	Order to Show Cause
UCCJA	Uniform Child Custody Jurisdiction Act

**FRESNO COUNTY SUPERIOR COURT**

**APPENDIX D: JUVENILE**

**APPENDIX D1**

**TABLE OF ABBREVIATIONS**

CPS	Children's Protective Services
DSS	Fresno County Department of Social Services

**FRESNO COUNTY SUPERIOR COURT**

**APPENDIX D2**

**SUPERIOR COURT, COUNTY OF FRESNO  
SITTING AS THE JUVENILE COURT**

**COURT DESIGNATED CHILD ADVOCATE**

**OATH**

\_\_\_\_\_  
print your full legal name

I, \_\_\_\_\_, do solemnly swear, that  
ADVOCATE'S NAME

I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that in performing the duties of a Court Appointed Special Advocate, I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of a Court Appointed Special Advocate to the best of my ability and will serve the best interests of the child.

As an officer of the Court, I will respect and follow the rules of the Court and will to the best of my ability maintain fairness, impartiality and integrity in my role as advocate for the child.

I will adhere to the rules of confidentiality and will respect the privacy of all parties.

I will not take a case where I have any prior knowledge of the child or family member.

I agree to comply with the requirements of the child abuse reporting law (Welfare and Institutions Code Section 11165 et. seq.), reporting any known or suspected instances of child abuse or neglect.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Appointed Child Advocate

\_\_\_\_\_  
Presiding Judge, Juvenile Court

FRESNO COUNTY SUPERIOR COURT

APPENDIX D3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

In the matter of,

) No. \_\_\_\_\_

)

)

)

STIPULATION FOR DISCLOSURE OF  
JUVENILE COURT RECORDS

)

DOB:

) [W&I §827]

)

A Minor. \_\_\_\_\_

)

The parties in the above-entitled action hereby stipulate to a limited disclosure of juvenile court records involving the minor in the above-entitled matter. The limitations are as follows:

1. The disclosure is limited to only those documents that meet the description of the documents requested in the Welfare & Institutions Code §827 petition.

2. The disclosure is limited to the party that filed the §827 petition, opposing parties, all parties' counsel, counsel's immediate office staff, and any expert witness and/or investigator retained by counsel for purposes of the pending matter that gave rise to the petition.

///

## FRESNO COUNTY SUPERIOR COURT

1           3. The disclosed records are still open to any  
2 available objection and no determination is made as to their  
3 admissibility in any judicial or administrative proceeding.

4           4. This disclosure does not allow for testimony to be  
5 taken concerning the documents nor the documents to be entered  
6 into evidence at trial or an evidentiary hearing. Any such  
7 further dissemination requires an additional §827 petition.

8           5. The requesting party shall pay the County  
9 Department of Children & Family Services reasonable copy costs as  
10 defined in Evidence Code §1563(b)(1).

11           6. At the conclusion of the matter that gave rise to  
12 the petition, all parties are required to destroy the released  
13 documents or return them to \_\_\_\_\_.

14  
15 Date: \_\_\_\_\_

16  
17 \_\_\_\_\_

18  
19 Date: \_\_\_\_\_

### ORDER

20  
21 Pursuant to stipulation of the parties and good cause  
22 appearing therefor,

23 IT IS ORDERED that the County of Fresno, Department of  
24 Children & Family Services shall disclose documents responsive to  
25 the §827 petition within 10 days of the signing of this order or  
26 as soon thereafter as the parties agree.

27 Date: \_\_\_\_\_

Judge of the Superior Court

28 Appendix D3 (Rev 7-1-00)

FRESNO COUNTY SUPERIOR COURT

APPENDIX E: PROBATE

APPENDIX E1

Attorney/Bar Number:

Address:

City:

Phone:

Fax:

SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

In the matter of

) No.

)  
) AGREEMENT TO SUBMIT DISPUTE TO  
) A TEMPORARY JUDGE AND ORDER  
) THEREON

“Party 1” and “Party 2” agree as follows:

1. There is a dispute between “Party 1” and “Party 2” relating to the \_\_\_\_\_

(the “Petition”) filed by “Party \_\_\_\_” and now set for hearing on (date) \_\_\_\_\_

in Department \_\_\_\_\_ of this Court at \_\_\_\_\_ a.m.

2. The dispute involves the following issues (“Issues”): (Describe issues: e.g.)

a.

\_\_\_\_\_

The correctness of the First Account Current

\_\_\_\_\_

including receipts and disbursements reflected therein:

b.

\_\_\_\_\_

The correctness of values in the inventories filed in these proceedings

c.

\_\_\_\_\_

Surcharge against Personal Representative and/or counsel for Personal Representative for losses

\_\_\_\_\_

to the Estate by reason of alleged failure of the Personal Representative and/or his counsel

\_\_\_\_\_

to exercise ordinary care and diligence in managing and controlling the estate.

d.

\_\_\_\_\_

Proper computation of statutory fees and commissions

# FRESNO COUNTY SUPERIOR COURT

(If additional space needed, please attach Exhibit A.)

3. “Party 1” and “Party 2” have agreed to resolve the Issues by referring the dispute to a temporary judge, for summary determination pursuant to Probate Code section 9620(a) [or section 2405(a)];

4. The parties acknowledge that they have received a copy of the Fresno County Probate Policy relating to the Probate Code section 9620(a) [or section 2405(a)] procedure and its exhibits and have read it and agree to be bound by all terms of the Policy and its exhibits;

5. The parties hereto agree that the temporary judge shall proceed promptly to hear and determine the Issues in controversy by summary procedure, without further pleadings or discovery. The decision of the temporary judge shall be subject to section 632 of the Code of Civil Procedure. Judgment shall be entered on the decision of the temporary judge, and shall be as valid and effective as if rendered by a judge of this Court in an action between the parties.

DATED: \_\_\_\_\_  
“Party 1”

DATED: \_\_\_\_\_  
“Party 2”

## ORDER REFERRING DISPUTE FOR SUMMARY DETERMINATION PER AGREEMENT

IT IS HEREBY ORDERED that, pursuant to the agreement of “Party 1” and “Party 2,” the issues set forth in said agreement are hereby referred to \_\_\_\_\_, as temporary judge for summary determination pursuant to Probate Code section 9620(a) [or section 2405(a)], and the Fresno County Probate Policy for Short-Cause Contested Probate Matters.

DATED: \_\_\_\_\_  
Judge of the Superior Court



# FRESNO COUNTY SUPERIOR COURT

## APPENDIX E2

### ATTORNEY APPLICATION FOR APPOINTMENT TO PROBATE REFERENCE PANEL

I, \_\_\_\_\_, apply for appointment to the Probate Reference Panel.

1. I was admitted to practice law in the State of California in (year) \_\_\_\_\_.

2. I agree to comply with the terms of the eligibility requirements, including but not limited to the following.

a. I have read the eligibility requirements for panel members, and I meet those requirements.

b. I acknowledge ethical conflict of interests rules apply. I will review my position with respect to each particular appointment. I agree to advise the parties immediately if a conflict exists or arises.

c. I have read and agree to comply with all applicable sections of Fresno Superior Court Local Rules, Probate Policy Memorandum.

3. I speak the following foreign languages: \_\_\_\_\_

4. I have been subject to a State Bar disciplinary proceeding:

Yes: \_\_\_\_\_ No: \_\_\_\_\_

If you answered "Yes," please explain: \_\_\_\_\_

---

5. If at any time while I am a member of this panel my status as a member of the State Bar changes, I agree to notify the Court, in writing within 10 days of that change.

## FRESNO COUNTY SUPERIOR COURT

6. I do not wish to serve as temporary judge in these types of matters:

\_\_\_\_\_ conservatorships and guardianships  
\_\_\_\_\_ probate administration  
\_\_\_\_\_ trust administration  
\_\_\_\_\_ selection of fiduciaries  
\_\_\_\_\_ surcharge actions  
\_\_\_\_\_ accounting disputes

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Dated: \_\_\_\_\_ Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

FRESNO COUNTY SUPERIOR COURT

APPENDIX E3

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF FRESNO

In the Matter of ) Case No.  
)  
) "PARTY 1's" BRIEF OF REFERENCE  
) HEARING BEFORE  
) \_\_\_\_\_,  
) TEMPORARY JUDGE  
\_\_\_\_\_)

"Party 1" submits the following pursuant to reference under Probate Code Section 9620(a) [or Section 2405(a)] with respect to the hearing now set for (date) \_\_\_\_\_ before (name) \_\_\_\_\_ as temporary judge.

1. Statement of Issues: [Number and identify each issue to be decided. These should coincide with the issues described in the reference Agreement.]

2. Documents: [Make reference to the "Joint Document Binder" previously agreed to by the parties and filed with the reference judge concurrently with this Brief. If there are any "disputes" regarding documents, please identify the document and your position regarding its relevance and admissibility. (These rules, if any, will be resolved at the outset of the hearing.)]

3. Witnesses: [Please list the witnesses whose testimony you will present and briefly describe what each witness will say.]

4. Positions: [Please present a brief and concise statement of your position on each issue, with numbering corresponding to the list of issues in Item 1 above.]

DATED: \_\_\_\_\_  
(Signature)

# FRESNO COUNTY SUPERIOR COURT

## APPENDIX E4

### NEWSPAPER ADJUDICATION FOR PROBATE PUBLICATION

City of Residence	Newspaper Qualified for Publication
Coalinga	Coalinga Record
Clovis	The Clovis Independent and The Fresno Bee
Fowler	Fowler Ensign
Fresno	The Fresno Bee
	Fresno Business Journal
Kerman	The Kerman News
Kingsburg	Kingsburg Recorder
Mendota	Firebaugh Mendota Journal and The Mendota Times
Prather	Mountain Press
Reedley	The Reedley Exponent
Sanger	The Sanger Herald
San Joaquin	Westside Advance
Selma	Selma Enterprise

If the decedent did not reside in one of the above cities, publication must be in either:

- 1) The Fresno Business Journal, or
- 2) The Fresno Bee, if the decedent resided in one of the following cities:

Auberry	Friant	Parlier
Big Creek	Firebaugh	Piedra
Biola	Five Points	Pinedale
Cantua Creek	Huron	Raisin City
Caruthers	Kings Canyon	Shaver
Centerville	Laton	Squaw Valley
Del Rey	Miramonte	Tollhouse
Dunlap	Orange Cove	Tranquility

- 3) In any of the above newspapers upon proof by declaration that such newspaper is circulated within the area of the County in which the decedent resided, if the decedent did not reside within the city limits. (Effective July, 2000)

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